

Report on the

Alabama

Real Estate Commission

Montgomery, Alabama



Department of

Examiners of Public Accounts

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June 20, 2007

Location:
Gordon Persons Building
50 North Ripley Street, Room 3201
Montgomery, AL 36104-3833

Senator Larry Dixon
Chairman, Sunset Committee
Alabama State House
Montgomery, AL 36130

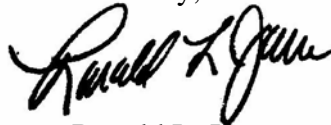
Dear Senator Dixon:

This report was prepared to provide information for use by the Sunset Committee in conducting its review and evaluation of the operations of the **Alabama Real Estate Commission** in accordance with the *Code of Alabama 1975*, Section 41-20-9.

The report contains unaudited information obtained from the management, staff, and records of the **Alabama Real Estate Commission**, in addition to information obtained from other sources.

Please contact me if you have any questions concerning this report.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald L. Jones", written in a cursive style.

Ronald L. Jones
Chief Examiner

Examiner
Calvin Cooper

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PROFILE

Purpose/Authority

The Alabama Real Estate Commission was created to license and regulate the business of real estate brokers and salespersons. Current statutory authority for the Alabama Real Estate Commission operations is found in the *Code of Alabama 1975*, Sections 34-27-1 through 34-27-101.

Commission Characteristics

| | |
|------------------------------|--|
| Members and Selection | <p>Nine (9) members 8 Real estate professionals 1 Consumer member</p> <p>Appointed by the Governor with the advice and consent of the Senate.</p> <p>The professional members are selected by the governor from a list of three persons nominated by the governing body of the Alabama Professional Real Estate Society or trade association which has the largest licensee membership</p> <p>Failure of the Senate to confirm a nominee results in a vacancy on the Commission.</p> <p><i>Code of Alabama 1975</i>, Section 34-27-7(a)</p> |
| Term | <p>Five (5) years.</p> <p>Not more than two (2) consecutive terms.</p> <p>Members hold office until a successor is appointed by the Governor and confirmed by the Senate.</p> <p><i>Code of Alabama 1975</i>, Section 34-27-7(c)</p> |
| Qualifications | <p>Resident and citizen of Alabama for at least 10 years prior to appointment,</p> <p>Licensed as real estate salesperson or broker for at least 10 years (except consumer member)</p> <p>Never convicted a violation of state or federal real estate license law.</p> <p><i>Code of Alabama 1975</i>, Section 34-27-7(c)</p> |

| | |
|------------------------------------|---|
| Racial Representation | <p>State law requires one (1) Black member from any congressional district of the state.</p> <p>Each successor Black member must be appointed from a different congressional district, to be rotated equally among the remaining congressional districts.</p> <p>Two (2) Black members currently serve on the commission.</p> <p><i>Code of Alabama 1975, Section 34-27-7(d)</i></p> |
| Geographical Representation | <p>Not more than one (1) member from any United States Congressional District shall be appointed to serve at the same time except for the Black member and the consumer member.</p> <p><i>Code of Alabama 1975, Section 34-27-7(c)</i></p> |
| Consumer Representation | <p>One (1) consumer member required by law to be a full voting member.</p> <p>The consumer member must be</p> <ul style="list-style-type: none"> • 21 years of age or older • A resident and citizen of Alabama for at least 10 years prior to appointment • A registered voter in Alabama • An owner of real property • Not been a licensed real estate broker or salesperson for the 10 years preceding appointment • Not related to, by blood or marriage, or employed by, a real estate licensee <p><i>Code of Alabama 1975, Section 34-27-7(e)</i></p> |
| Compensation | <p>Three hundred dollars (\$300) per month Same per diem and travel allowance paid to state employees for each day of a meeting to conduct the official business of the commission.</p> <p><i>Code of Alabama 1975, Section 34-27-7(g)</i></p> |
| <u>Operations</u> | |
| Administrator | <p>D. Philip Lasater, Executive Director Annual compensation \$115,229 set by the commission Non merit system</p> <p><i>Code of Alabama 1975, Section 34-27-7(h)</i></p> |

| Location | 1201 Carmichael Way, Montgomery, AL 36106 in building owned by the commission. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|-------------------------------|--|-------------------------------|--------|---------|--------|--------|--------|---------|--|--|-------------|--|--|--|--|--------|--|--|--|--|-------|--------|--------|---------|-------|--------|--------|---------|------|------|------|------|-------|-----|-----|-----|-------|------|------|------|------|-------|-----|-----|-----|-------|------|------|------|------|-------|-----|-----|-----|-------|------|------|-----|------|-------|-----|-----|-----|-------|
| Examinations | <p>Both salespersons and brokers are required to take a 140 question multiple choice license examination. A passing grade of 70% is required. Both examinations contain a 100 question national portion and a 40 question state law portion. The commission contracts with Applied Measurement Professionals, Inc to administer and grade examinations.</p> <p><i>Code of Alabama 1975, Section 34-27-33</i></p> <table><tr><th colspan="9">Licensing Examination Results</th></tr><tr><th colspan="5">Salesperson</th><th colspan="4">Broker</th></tr><tr><th></th><th>Taken</th><th>Failed</th><th>Passed</th><th>Average</th><th>Taken</th><th>Failed</th><th>Passed</th><th>Average</th></tr><tr><td>2006</td><td>5833</td><td>2694</td><td>3139</td><td>53.8%</td><td>606</td><td>236</td><td>370</td><td>61.1%</td></tr><tr><td>2005</td><td>5323</td><td>2397</td><td>2926</td><td>55.0%</td><td>404</td><td>141</td><td>263</td><td>65.1%</td></tr><tr><td>2004</td><td>3863</td><td>1569</td><td>2294</td><td>59.4%</td><td>362</td><td>128</td><td>234</td><td>64.6%</td></tr><tr><td>2003</td><td>2630</td><td>964</td><td>1666</td><td>63.3%</td><td>268</td><td>102</td><td>166</td><td>61.9%</td></tr></table> | Licensing Examination Results | | | | | | | | | Salesperson | | | | | Broker | | | | | Taken | Failed | Passed | Average | Taken | Failed | Passed | Average | 2006 | 5833 | 2694 | 3139 | 53.8% | 606 | 236 | 370 | 61.1% | 2005 | 5323 | 2397 | 2926 | 55.0% | 404 | 141 | 263 | 65.1% | 2004 | 3863 | 1569 | 2294 | 59.4% | 362 | 128 | 234 | 64.6% | 2003 | 2630 | 964 | 1666 | 63.3% | 268 | 102 | 166 | 61.9% |
| Licensing Examination Results | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Salesperson | | | | | Broker | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | Taken | Failed | Passed | Average | Taken | Failed | Passed | Average | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2006 | 5833 | 2694 | 3139 | 53.8% | 606 | 236 | 370 | 61.1% | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2005 | 5323 | 2397 | 2926 | 55.0% | 404 | 141 | 263 | 65.1% | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2004 | 3863 | 1569 | 2294 | 59.4% | 362 | 128 | 234 | 64.6% | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2003 | 2630 | 964 | 1666 | 63.3% | 268 | 102 | 166 | 61.9% | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Licensees (Active) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Real Estate | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Companies | FY 06 | FY 05 | FY 04 | FY 03 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Brokers | 4,415 | 3,907 | 4,126 | 4,478 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Salespersons | 8,254 | 7,595 | 7,634 | 8,039 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Total | 20,526 | 17,456 | 16,659 | 17,312 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | 33,195 | 28,958 | 28,419 | 29,829 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Timeshare | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Companies | FY 06 | FY 05 | FY 04 | FY 03 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Brokers | 4 | 4 | 4 | 4 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Salespersons | 4 | 4 | 4 | 4 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Total | 29 | 36 | 41 | 39 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | 37 | 44 | 49 | 47 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Reciprocity | <p>Yes, upon proof of current active licensure in another state. The board is seeking legislation in the 2007 legislative session to require reciprocity licensees to attend a 6-hour education course and successfully complete an examination on Alabama licensing law (HB 276 and SB 165) See Appendices.</p> <p><i>Code of Alabama 1975, Section 34-27-32(b)(1)</i></p> | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Continuing Education | <p>Fifteen (15) hours of courses approved by the commission every two (2) years.</p> <p>Failure to complete the required continuing education results in the license being placed on inactive status on the first day of the next license period and subject to all reactivation requirements.</p> <p><i>Code of Alabama 1975, Section 34-27-35(j)</i></p> | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

| | | | |
|---|---|---|--|
| Employees | <p>One (1) non merit system employee, Two (2) unclassified merit system employees and Thirty-two (32) classified merit system employees.</p> <p><i>Code of Alabama 1975, Section 34-27-7(h)</i></p> | | |
| Legal Counsel | <p>Deputy Attorney General Charles Sowell Assistant Attorney General Chris Booth Both are commission employees</p> | | |
| Subpoena Power | <p>The commission may issue subpoenas to compel the testimony of witnesses and for the production of records</p> <p><i>Code of Alabama 1975, Sections 34-27-36 and 34-27-37</i></p> | | |
| Internet Presence | <p style="text-align: center;">Website http://www.arec.state.al.us</p> <table border="0"> <tr> <td style="vertical-align: top;"> <p>Commission Check Your CE Credit License Renewal Online Service CMAP Forms and Application FAQS License Law License Search License Verification Newsletter Contact Us Scrolling Menu</p> <p>(Shows next two meeting dates, links to the newsletter <i>Updates</i>, a survey <i>How are We Doing</i> and a License Verification Information)</p> <p>Legal Formal Complaints Enforcement Jurisdiction Gifts, Rebates & Kickbacks Unlicensed Assistants Risk Management 101 Office Audit Checklist</p> <p>Online Services</p> <p>Links</p> <p>Renewal of Licensees is available online– According to staff, as of March 2007, 68% of licensees had renewed online.,</p> </td><td style="vertical-align: top;"> <p>Licensing Menu Salesperson Broker Company Fees Certification Licensure</p> <p>Education Approved Schools Course Requirements Real Estate Course Search Real Estate Exams Instructor Research</p> <p>Forms and Applications</p> <p>Instant Access Menu Consumer Information Booklet Real Estate Course Search ARELLO Staff Directory Directory of Commissioners Consumer Guide Commission Meeting Minutes Alabama License Law Book Order Form</p> </td></tr> </table> | <p>Commission Check Your CE Credit License Renewal Online Service CMAP Forms and Application FAQS License Law License Search License Verification Newsletter Contact Us Scrolling Menu</p> <p>(Shows next two meeting dates, links to the newsletter <i>Updates</i>, a survey <i>How are We Doing</i> and a License Verification Information)</p> <p>Legal Formal Complaints Enforcement Jurisdiction Gifts, Rebates & Kickbacks Unlicensed Assistants Risk Management 101 Office Audit Checklist</p> <p>Online Services</p> <p>Links</p> <p>Renewal of Licensees is available online– According to staff, as of March 2007, 68% of licensees had renewed online.,</p> | <p>Licensing Menu Salesperson Broker Company Fees Certification Licensure</p> <p>Education Approved Schools Course Requirements Real Estate Course Search Real Estate Exams Instructor Research</p> <p>Forms and Applications</p> <p>Instant Access Menu Consumer Information Booklet Real Estate Course Search ARELLO Staff Directory Directory of Commissioners Consumer Guide Commission Meeting Minutes Alabama License Law Book Order Form</p> |
| <p>Commission Check Your CE Credit License Renewal Online Service CMAP Forms and Application FAQS License Law License Search License Verification Newsletter Contact Us Scrolling Menu</p> <p>(Shows next two meeting dates, links to the newsletter <i>Updates</i>, a survey <i>How are We Doing</i> and a License Verification Information)</p> <p>Legal Formal Complaints Enforcement Jurisdiction Gifts, Rebates & Kickbacks Unlicensed Assistants Risk Management 101 Office Audit Checklist</p> <p>Online Services</p> <p>Links</p> <p>Renewal of Licensees is available online– According to staff, as of March 2007, 68% of licensees had renewed online.,</p> | <p>Licensing Menu Salesperson Broker Company Fees Certification Licensure</p> <p>Education Approved Schools Course Requirements Real Estate Course Search Real Estate Exams Instructor Research</p> <p>Forms and Applications</p> <p>Instant Access Menu Consumer Information Booklet Real Estate Course Search ARELLO Staff Directory Directory of Commissioners Consumer Guide Commission Meeting Minutes Alabama License Law Book Order Form</p> | | |

| | |
|---------------------------------------|--|
| Attended Board Member Training | 6 Commissioners, the executive director, the assistant executive director, legal counsel, the chief accountant and other staff have attended |
| <u>Financial</u> | |
| Funds Source | Fees, fines, charges or other money collected by the commission during its operations |
| State Treasury | Monies collected by the commission are deposited in the State Treasury to the credit of the Real Estate Commission Revenue Fund. |
| Unused Funds | <p>All money remaining unexpended in the Real Estate Commission Revenue Fund at the end of each fiscal year is retained by the Commission for the following fiscal year.</p> <p><i>Code of Alabama 1975, Section 34-27-4</i></p> |

SIGNIFICANT ITEMS

None

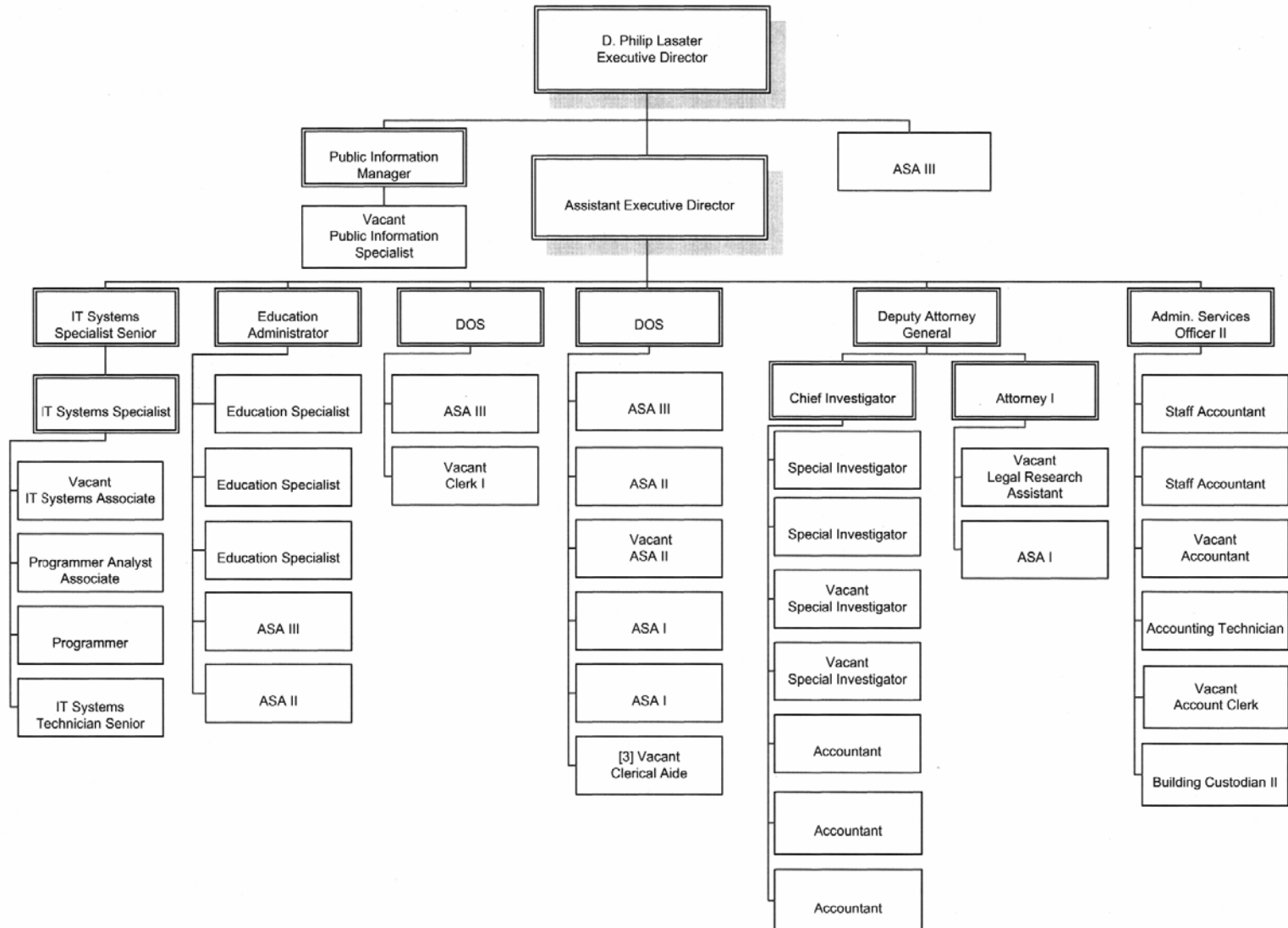
STATUS OF PRIOR FINDINGS

All prior findings have been resolved.

ORGANIZATION

Alabama Real Estate Commission Organizational Chart

February 2007



PERSONNEL

| Classification | Total | Number | Race | Sex |
|--------------------------------------|--------------|---------------|-------------|------------|
| Staff Accountant | 2 | 1 | Black | Female |
| | | 1 | White | Female |
| Accountant | 3 | 2 | White | Female |
| | | 1 | Black | Male |
| Accounting Technician | 1 | 1 | White | Female |
| Administrative Services Officer II | 1 | 1 | White | Female |
| Administrative Support Assistant I | 3 | 1 | Black | Female |
| | | 1 | Black | Male |
| | | 1 | White | Male |
| Administrative Support Assistant II | 2 | 1 | Black | Female |
| | | 1 | White | Female |
| Administrative Support Assistant III | 4 | 3 | Black | Female |
| | | 1 | White | Female |
| Assistant Executive Director | 1 | 1 | White | Female |
| Attorney I/II | 1 | 1 | White | Male |
| Attorney IV | 1 | 1 | White | Male |
| Building Custodian II | 1 | 1 | White | Male |
| Departmental Operations Specialist | 2 | 2 | Black | Female |
| Education Administrator | 1 | 1 | White | Male |
| Education Specialist | 2 | 1 | White | Female |
| | | 1 | White | Male |
| Executive Director | 1 | 1 | White | Male |
| IT Systems Technician, Sr. | 1 | 1 | White | Male |
| IT Systems Specialist | 1 | 1 | White | Male |
| IT System Specialist, Sr. | 1 | 1 | White | Female |
| Programmer | 1 | 1 | White | Male |
| Programmer Analyst | 1 | 1 | Black | Male |
| Public Information Manager | 1 | 1 | Black | Female |
| Special Investigator (2) | 2 | 2 | White | Male |
| Special Investigator Chief | 1 | 1 | White | Male |
| Total | 35 | 35 | | |

PERFORMANCE CHARACTERISTICS

Number of Active Licensees per Employee - 948

Number of Persons per Active Licensee in Alabama and Surrounding States

| State | As of Date | Population | Licensees* | Persons per Licensee |
|----------------|-------------------|-------------------|-------------------|-----------------------------|
| Alabama | 9/25/06 | 4,599,030 | 33,195 | 139 |
| Tennessee | 10/1/06 | 6,038,803 | 55,348 | 109 |
| Georgia | 7/1/06 | 9,363,941 | 95,749 | 98 |
| Florida | 6/30/06 | 18,089,888 | 336,497 | 54 |
| Mississippi | 2/5/07 | 2,910,540 | 12,246 | 238 |

* Source: Association of Real Estate License Law Officials

Operating Disbursements per Licensee - \$85.69

Notification to Licensee of Commission Decisions to Amend Administrative Rules

In addition to publication in the *Administrative Monthly*, as required by Alabama's Administrative Procedure Act, the commission also gives notice of proposed rule changes and public hearings by doing the following:

- Fax a synopsis of proposed rule changes to the Alabama Association of REALTORS®.
- Fax a synopsis of proposed rule changes to each local Association of REALTORS® for distribution to members.
- Notify instructors by one of the following methods:
 - through a special mailing
 - an email
 - in the *Educator* (the commission's newsletter for approved instructors and administrators)
- Notice of public hearings and rule changes in their entirety are placed on the commission's website.

A communication is sent with the synopsis of proposed changes that states how one can obtain the complete rule and the actual language of the proposed change.

Investigation of Complaints

The commission conducts investigations upon receipt of complaints of violations of the Alabama real estate license law. Investigative activity is documented and maintained in investigative files. The files include written and telephone complaints made by the public and by licensees, and the commission's findings resulting from its audits of licensed companies.

Upon receipt of a complaint, the complainant is notified that the issue has been assigned to an investigator. The investigators conduct the necessary investigative steps and provide the commission's Assistant Attorney General (AAG) the results of the investigation. The AAG determines if there is probable cause to file a formal complaint. The complainant is notified of the AAG's determination. If there is probable cause to file a formal complaint, the AAG informs the commission's executive director and a formal complaint file is established. The executive director files the formal complaint, and the commission conducts a hearing. The procedures for conducting a formal hearing are outlined in the Administrative Procedures Act.

Complaint Resolution

Complaint Investigations & Inquires

| | | FY 2006 | | FY 2005 | | FY 2004 | | FY 2003 |
|-----------------------------------|----------|---------------------------|----------|---------------------------|----------|---------------------------|----------|---------------------------|
| | # | Days to Resolution | # | Days to Resolution | # | Days to Resolution | # | Days to Resolution |
| Complaint Investigations | 170 | 20.0 | 186 | 23.3 | 161 | 17.6 | 163 | (a) |
| Formal Complaints (b) | 7 | 80.8 | 8 | 86.3 | 9 | 167 | 7 | 117.4 |
| Complaints & Inquiries | 4660 | | 5462 | | 6229 | | 6720 | |

(a) Unavailable, records destroyed per Records Disposition Authority

(b) Does not include formal complaints filed by AREC on worthless checks, lack of continuing education, failure to notify of address change, etc

SMART BUDGETING

Acts of Alabama, 2004-50 (HJR89) states, "That all state agencies and entities receiving legislative appropriations are requested to submit to the Joint Legislative Budget Committee budget proposals in performance based budget language and form. This request is applicable for proposals for the 2005-2006 fiscal year to be submitted to the 2005 Regular Session and for each succeeding fiscal year. The Director of Finance is requested to inform each public agency or entity of our desires concerning this matter."

To comply with this request, the Director of Finance implemented a system of budgeting that requires each agency to report its performance, the system to be named SMART, an acronym for Specific, Measurable, Accountable, Responsive, Transparent.

As a part of the SMART Budgeting system, each agency is required to submit its goals and objectives to the Department of Finance - the goals to be stated as long term, multi-year targets, which are to be achieved through accomplishment of stated objectives, which are single-year targets. In order to report progress, the goals and objectives must necessarily be designed so that the agency can measure annual progress toward their achievement. The SMART Budgeting system includes an Operations Plan and a Quarterly Performance Report. The performance report presents information on achievement of an agency's annual objectives, and is the SMART Budgeting report that presents performance information. If an agency has not included at least one objective for each goal, performance relative to that goal will not be reported. For the 2006 fiscal year, each licensing/regulatory agency was required to have at least one goal and one or more objectives directly related to the goal. Additional annual objectives were allowed without corresponding goals. The commission's Operations Plans for the 2006 and 2007 fiscal years and the Quarterly Performance Report for the 2006 fiscal year are included in the appendices of this report.

Among agencies that were not used to reporting performance, we found confusion as to how to design the goals and objectives and how to differentiate between goals and objectives. Routinely we found goals with no directly related objectives. Both goals and objectives were often too abstract to be measurable, and progress toward their achievement could not be meaningfully reported. The Department of Finance is aware of these deficiencies and is taking remedial steps.

In these respects, the Real Estate Commission was no exception. Some goals were not accompanied by directly related objectives. Some goals and objectives were abstract, and progress toward their achievement could therefore not be meaningfully measured and reported.

The board submitted a 2006 Operations Plan and a Quarterly Performance Report for all four (4) quarters of 2006. The board submitted an Operations Plan for the 2007 fiscal year.

The board's performance goals and objectives for the 2006 and 2007 fiscal years, the board's reported performance for the 2006 fiscal year, and the examiner's comments are presented in the following table.

| 2006 GOALS | COMMENTS |
|---|---|
| 1. To provide timely and high-quality services to every client. | There are two goals, timeliness and high quality . There is no measurable long-term, performance target for any named activity of the commission. There is no directly related objective. Consequently, performance for the goal was not reported. |
| 2. To ensure that only qualified applicants enter the profession. | The goal does not provide a measurable long-term, performance target for any named activity of the commission. This is a requirement of the licensing law and is a workload statement rather than performance goal. Also, there is no objective directly related to this goal. Consequently, performance for the goal was not reported. |
| 3. To maintain essential information on all Real Estate licensees practicing in Alabama | The goal does not provide a measurable long-term, performance target for the named activity. There is no directly related objective. Consequently, performance for the goal was not reported. |
| 4. To protect the public by training instructors , by improving Real Estate Education programs and developing consumer education . | There are three goals; training instructors , improving Real Estate Education programs and developing consumer education . There is no measurable long-term, performance target for any of the named activities. Also, there is no objective directly related to any of the goals. Consequently, performance for the goals was not reported. |

| | |
|---|---|
| 5. To resolve all license law complaints in a timely manner | There is no timeliness benchmark level of performance stated from which it can be determined when the goal is reached. Also, there is no objective directly related to the goal. Consequently, performance for the goal was not reported. |
|---|---|

| 2006 OBJECTIVES | REPORTED | COMMENTS |
|---|-----------------|---|
| 1. Maintain services at a cost of less than \$125.00 per license. | \$82 | The objective is appropriate and is reported on the Quarterly Performance Report. |
| 2. Reduce number of complaints through education of licensees. | 1% reduction | The objective is open-ended and has no stated benchmark from which it can be determined whether the desired amount of reduction was reached. Also, there are other strong factors that can reduce complaints; such as stronger enforcement or economic changes that result in fewer real estate transactions. |

| 2007 GOALS | COMMENTS |
|---|--|
| G1: To protect consumers | The goal does not provide a measurable long-term, performance target for any named activity of the commission. There is no directly related objective. Consequently, performance for this goal will not be reported. |
| G2: To be recognized as among the best Real Estate Commissions | The goal does not provide a measurable long-term, performance target for any named activity of the commission. There is no directly related objective. Consequently, performance for this goal will not be reported |
| G3: To continuously improve the effectiveness and efficiency of programs and operations | The goal does not provide a measurable long-term, performance target for any named activity of the commission. There is no directly related objective. Consequently, performance for this goal will not be reported |
| G4: To continuously improve our service to and communications with licensees. | The goal does not provide a measurable long-term, performance target for the named activities. There is no directly related objective. Consequently, performance for this goal will not be reported |

| | |
|--|--|
| G5: To employ, train, and reward competent, diverse, motivated, and committed staff. | The goal is too abstract to be meaningfully measured. The goal does not provide a measurable long-term, performance target for any of the named activities. There is no directly related objective. Consequently, performance for this goal will not be reported |
| G6: To effectively and fairly administer the law. | The goal is too abstract to be meaningfully measured. The goal does not provide a measurable long-term, performance target for the named activity. There is no directly related objective. Consequently, performance for this goal will not be reported |

| 2007 OBJECTIVES (from Operations Plan Projected Quarterly Performance Report) | TO BE REPORTED AS | COMMENTS |
|--|--|--|
| To efficiently use resources | Expenditures/licensees | A target of \$27 is shown, but not presented in the objective statement. Performance can be reported, but will not be meaningful unless the target is written into the objective statement. (Targets shown on the projected performance reports are not shown on the final performance reports.) |
| Written complaints handled within three months | % handled | A target of 85% is shown, but not presented in the objective statement. Performance can be reported, but will not be meaningful unless the target is written into the objective statement. (Targets shown on the projected performance reports are not shown on the final performance reports.) |
| Customers input will show service to exceed their expectations. | No reporting units are stated. A note states, "Customer service is not measurable at this time." | No target level of performance is shown or presented in the objective statement. Performance cannot be reported. |

| | | |
|----------------------------------|-----------|---|
| Licenses processed within 2 days | % of time | A target of 95% is shown, but not presented in the objective statement. Performance can be reported, but will not be meaningful unless the target is written into the objective statement. (Targets shown on the projected performance reports are not shown on the final performance reports.) |
|----------------------------------|-----------|---|

REGULATION IN CONJUNCTION WITH OTHER ENTITIES

The Alabama Real Estate Commission interacts with the following entities:

- National Association of Realtors (NAR) – a trade association involved in all aspects of residential and commercial real estate that also functions as a self regulatory organization for real estate brokerage.
- Alabama Association of Realtors (AAR) - dedicated to the protecting the rights of realtors, offers services to members, provides educational opportunities, creates networking opportunities through organized meetings, and reports industry information which impact members.
- Association of Real Estate License Law Officials ((ARELLO) – facilitates the exchange of information and cooperation among regulators and policy makers in the area of real property.
- Alabama Real Estate and Research and Education Center (AREREC) – a research and education facility located at the University of Alabama designed to support Alabama’s real estate community and economic development efforts.
- Alabama Real Estate Appraisers Board – state licensing board that licenses real estate appraisers in accordance with federal and state law.
- Alabama Board of Auctioneers – Auctioneers of real estate must be real estate brokers regulated by the Real Estate Commission.
- Real Estate Educators Association (REEA) – a society of professional instructors that. provides professional development to individuals and organizations involved in real estate education.
- Central Alabama Fair Housing Center – A private non-profit agency involved in the enforcement of the Fair Housing Act throughout central and south Alabama. The center promotes understanding of the federal *Fair Housing Act*.

FINANCIAL INFORMATION

Fund Structure

The commission operates through the State Treasury from the following funds:

- ♦ ***Fund 371*** – The Real Estate Commission Fund – **Operating Fund** - Fund 371 was established by the *Code of Alabama 1975*, Section 34-27-4, as the commission's operating fund. Fund 371 is used to accumulate and disburse all fees, fines, charges and other money collected by the commission, except recovery fund fees and portions of multi-year license fees held in escrow to fund operations during the

second year of the commission's two-year licensing cycle. The commission retains unobligated year-end balances in this fund.

- ◆ **Fund 372 - The Real Estate Recovery Fund 372**– Fund 372 was established by the *Code of Alabama 1975*, Section 34-27-31, to collect and accumulate fees paid in lieu of bond by brokers and salespersons, except time-share brokers and salespersons. Aggrieved parties may recover damages from this fund arising from violations of the real estate licensing law by real estate brokers or salespersons. Fund balances may be invested, with interest income divided equally between the commission's operating fund and the University of Alabama Chair for Real Estate Research and Development. *Because the balances in the Real Estate Recovery Fund cannot be used for commission operations, the fund is not presented in the Schedule of Cash Receipts, Disbursements, and Balances presented in this report. The balance in the fund at September 30, 2006 was \$1,044,381.02.*

- ◆ **Fund 569 - The Real Estate Commission Proportionate Fund** – the Proportionate Fund functions as a Multi-Year License Fee Escrow Fund. The fund was established by the *Code of Alabama 1975*, Section 34-27-4, to hold a portion of license receipts in escrow in the first year for use during the second year of the commission's two-year licensing cycle. Balances in the fund may be invested. Interest from investments must be deposited into the commission's operating fund. At September 30, 2006, the commission held \$7,205,000 invested from this fund in repurchase agreements, which are classified as cash on the Schedule of Cash Receipts, Disbursements, and Balances presented in this report.

Schedule of Fees

| Purpose | Amount Charged | Amount Authorized | Statutory Authority | Administrative Rule |
|---------------------|-----------------------|--------------------------|----------------------------|----------------------------|
| Salesperson License | | | | |
| Temporary | 150.00 | 150.00 | 34-27-35(c)(1) | |
| Original | 85.00 | 85.00 | 34-27-35(c)(2) | |
| Renewal | 85.00 | 85.00 | 34-37-35(c)(2) | |
| Timeshare | 50.00 | 50.00 | 34-27-66(d) | |
| Reciprocal | 85.00 | 85.00 | 34-27-32(b)(1) | |
| Broker License | | | | |
| Original | 150.00 | 150.00 | 34-27-35(c)(1) | |
| Renewal | 95.00 | 95.00 | 34-27-35(c)(2) | |
| Temporary | 150.00 | 150.00 | 34-27-35(c)(1) | |
| Reciprocal | 150.00 | 150.00 | 34-27-32(b)(1) | |
| Multiple | 150.00 | 150.00 | 34-27-32(b)(1) | |
| Company License | | | | |
| Original | 85.00 | 85.00 | 34-27-35(c)(2) | |
| Renewal | 85.00 | 85.00 | 34-27-35(c)(2) | |
| Timeshare | | | | |
| Registration | 750.00 | 750.00 | 34-27-64(a)(b) | |
| Renewal | 750.00 | 750.00 | 34-27-64(a)(b) | |
| Late Renewal | | | | |
| Broker | 150.00 | 150.00 | 34-27-35(g) | |
| Salesperson | 150.00 | 150.00 | 34-27-35(g) | |

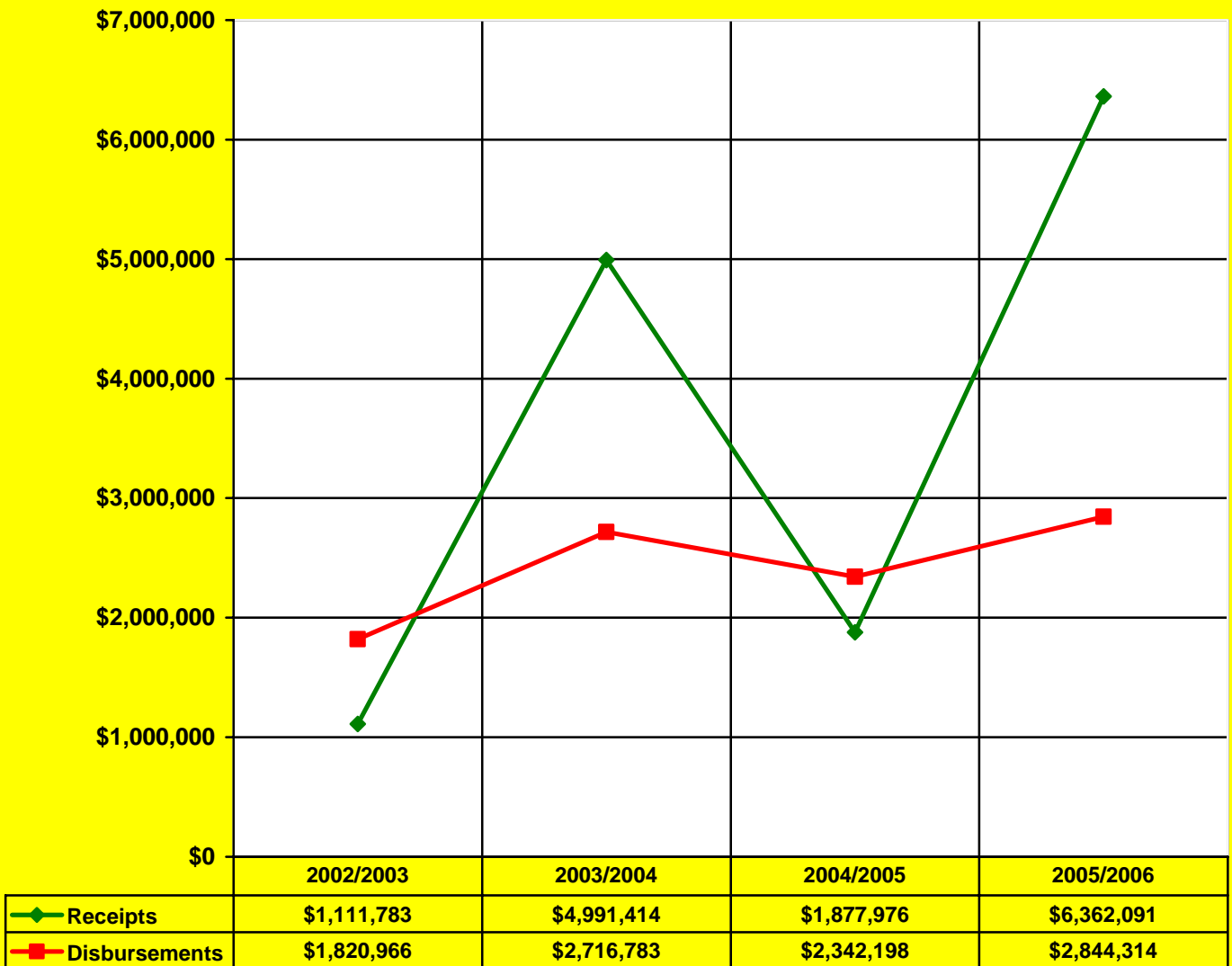
| Purpose | Amount Charged | Amount Authorized | Statutory Authority | Administrative Rule |
|------------------------|-----------------------|--------------------------|----------------------------|----------------------------|
| Timeshare Salesperson | 15.00 | 15.00 | 34-27-66(e) | |
| License Transfer | | | | |
| Broker | 25.00 | 25.00 | 34-27-34(b) | |
| Salesperson | 25.00 | 25.00 | 34-27-34(b) | |
| Timeshare Salesperson | 50.00 | 50.00 | 34-27-66(h) | |
| Change in License Fee | 25.00 | 25.00 | 34-27-34(b) | |
| Examination | | | | |
| Salesperson | 75.00 | 75.00 | 34-27-33(a) | |
| Broker | 75.00 | 75.00 | 34-27-33(a) | |
| Timeshare Salesperson | 75.00 | 75.00 | 34-27-66(d) | |
| Recovery Fund | | | | |
| Temporary - Initial | 30.00 | 30.00 | 34-27-33(c) | |
| Original - Initial | 30.00 | 30.00 | 34-27-31(c) | |
| Less than \$500,000 | 30.00 | 30.00 | 34-27-31(d) | |
| Research & Education | | | | |
| Renewal | 2.50 | 2.50 | 34-27-35(d) | |
| Original | 30.00 | 30.00 | 34-27-35(e) | |
| Less than \$500,000 | 30.00 | 30.00 | | |
| Real Estate Courses | | | | |
| Instructors | 50.00 | 50.00 | 34-27-6(c) | 790-X1-.10(6) |
| Course approval | 100.00 | 100.00 | 34-27-6d | |
| Fines | | | | |
| Broker & Salesperson | | | | |
| Not less than | 25.00 | 25.00 | 34-27-36(a) | |
| Not more than | 1,000.00 | 1,000.00 | 34-27-36(a) | |
| Timeshare Violation | | | | |
| Not less than | 25.00 | 25.00 | 34-27-61 | |
| Not more than | 1,000.00 | 1,000.00 | 34-27-61 | |
| Sellers Penalty | | | | |
| Not less than | 100.00 | 100.00 | 34-27-68(9) | |
| Not more than | 2,000.00 | 2,000.00 | 34-27-68(9) | |
| Criminal Record Search | 25.00 | | 34-27-32(j) | |
| Copies | 10.00 | 10.00 | 34-27-32(k) | |
| Licensee Listing | 100.00 | Cost | | |

Schedule of Cash Receipts, Disbursements and Balances

For the Period October 1, 2002 through September 30, 2006

| | 2005/2006 | 2004/2005 | 2003/2004 | 2002/2003 |
|--|-----------------------|-----------------------|-----------------------|-----------------------|
| <u>Receipts</u> | | | | |
| Licensing Fees | \$5,829,860.00 | \$1,542,830.00 | \$4,598,065.00 | \$875,010.00 |
| Fines and Penalties | 134,500.00 | 190,070.00 | 107,225.00 | 185,975.00 |
| Interest Income | 81,314.19 | 32,039.46 | 57,541.45 | 20,453.27 |
| Miscellaneous | 36,423.69 | 40,169.23 | 23,265.89 | 15,668.23 |
| Research and Education | 231,385.00 | 96,080.00 | 160,770.00 | 80,690.00 |
| Increase (Decrease) in Balance of Undistributed Receipts | 48,607.79 | (23,213.00) | 44,546.25 | (66,013.30) |
| Total | 6,362,090.67 | 1,877,975.69 | 4,991,413.59 | 1,111,783.20 |
| <u>Expenditures</u> | | | | |
| Personnel | 1,497,834.59 | 1,232,526.52 | 1,086,254.54 | 1,054,066.58 |
| Employee Benefits | 463,119.69 | 385,118.81 | 288,051.36 | 257,473.11 |
| Travel in State | 76,240.77 | 55,661.64 | 41,518.31 | 41,066.65 |
| Travel out of State | 40,610.56 | 29,659.66 | 34,455.46 | 26,406.44 |
| Repairs and Maintenance | 21,022.96 | 23,955.22 | 34,540.50 | 11,309.50 |
| Rentals and Leases | 13,511.53 | 14,121.08 | 15,237.66 | 9,506.12 |
| Utilities and Communication | 105,399.43 | 77,037.81 | 87,114.45 | 79,162.31 |
| Professional Services | 96,268.64 | 65,770.51 | 48,309.63 | 55,197.80 |
| Supplies and Operating Expenses | 143,644.00 | 135,630.06 | 96,071.20 | 80,951.88 |
| Transportation Equipment Operation | 4,819.29 | 3,316.14 | 2,630.20 | 1,905.57 |
| Grants and Benefits | 20,721.88 | 12,803.89 | - | - |
| Capital Outlay | 33,599.00 | 20,816.58 | 766,330.35 | 34,489.63 |
| Transportation Equipment Purchases | 16,896.52 | - | - | - |
| Other Equipment Purchases | 191,664.88 | 19,586.00 | 148,109.65 | 23,447.88 |
| Transfer to University of Alabama | 118,960.00 | 266,193.66 | 68,160.00 | 145,982.36 |
| Total | 2,844,313.74 | 2,342,197.58 | 2,716,783.31 | 1,820,965.83 |
| Excess (Deficiency) of Receipts over Disbursements | 3,517,776.93 | (464,221.89) | 2,274,630.28 | (709,182.63) |
| Cash Balances at Beginning of Year | 4,203,484.82 | 4,667,706.71 | 2,393,076.43 | 3,102,259.06 |
| Cash Balances at End of Year | 7,721,261.75 | 4,203,484.82 | 4,667,706.71 | 2,393,076.43 |
| Reserved for Unpaid Obligations | (115,882.69) | (191,727.07) | (125,492.82) | (111,392.10) |
| Reserved for Capital Outlay | - | - | - | (210,952.60) |
| Unreserved Cash Balances at End of Year | \$7,605,379.06 | \$4,011,757.75 | \$4,542,213.89 | \$2,070,731.73 |

Operating Receipts vs. Operating Disbursements



QUESTIONNAIRES

Commission Members

A questionnaire was sent to nine (9) commission members. All nine commissioners responded as follows:

1. What are the most significant issues currently facing the Alabama Real Estate Commission and how is the Alabama Real Estate Commission addressing these issues?
 - Reciprocal license – proposed legislation to act on. Unlicensed activity – proposed legislation to act on.
 - We are presently beginning to enforce the law regarding unlicensed agents
 - The following are all receiving ongoing attention: (A) Unlicensed activity (B) Staff succession because of retirement possibilities (C) Facility/equipment expansion to meet growth (D) Focus on broker qualifications and education
 - Improving continuing education. We are focusing lots of attention on auditing schools and quality of instruction and course content.
 - As a new Commissioner, it appears that there is a need to regulate condominium associations because they control monies belonging to consumers. This could be quite detrimental without regulatory laws. Additionally, unlicensed activities should be regulated, and there should be reciprocal licenses for other states. The Alabama Real Estate Commission (AREC) will introduce legislation regarding these matters during the upcoming legislative session.
 - (1) Unlicensed activity (A) Studying ways to alert consumers that unlicensed activities be reported to the AREC. (2) Broker qualification (A) Developing a new pre-license course.
 - (1) Unlicensed activity. (A) Commission is studying ways to alert consumers that the AREC regulates (2) Broker educational qualification (A) Establish a task force to develop a 60 hrs broker's course.
 - We are studying the need for more Broker Education and different qualifications (task force has been established to look into 60 hour Broker Pre-lice classes). Unlicensed real estate activity affecting the public is issue we are addressing. Management of Community Association/licensure is increasing issue that we will investigate what direction we need to address affection Community Association. I have just come on board as a commissioner in October, 06 and I personally an in a learning/investigation curve.
 - How to inform the public of recent legislation so they will not violate the law. We are researching ways to inform public through print media and industry publications.

Commission Member Questionnaire

2. What changes to the Alabama Real Estate Commission laws are needed?

- Asked Sunset Committee to clarify some terminology in the statutes.
- Need legislation to have condo association throughout the state to be licensed & come under the laws of AL Real Estate Commission.
- (A) Clarification of advertising criteria (B) Education requirements for reciprocal licenses (C) Terminology clarification and verbiage changes
- Relatively minor changes which are being addressed in the 2007 legislative session.
- One of the changes in the Alabama Real Estate Commission laws is the requirement for additional licenses for reciprocal licensure. Legislation will be introduced to address this concern.
- (A) Signage/advertising requirements. (B) Reciprocal license applicants new to know more about Alabama law.
- (A) Establish size of letters for signs agents to real estate advertisement. (B) Require educational and testing for reciprocal license applicant.
- We have license law “clean up” recommendations that have been requested to include with Sunset Committee to incorporate in our continuing legislation for clarification. We are presently working jointly AAR/AREC Legislative Task Force, to review “the size of Letters” in advertising regulation and submit approval. Another issue is Reciprocal Licensure qualifications.
- I would like to see licensing of community Association Managers. This is becoming a growing issue in District 1. Also a section of Resort Rentals (vacation rentals) as to the differences in this vs. long term rentals.

3. Is the Alabama Real Estate Commission adequately funded?

 9 Yes No Unknown No Opinion

- In my opinion, the AREC is adequately funded
- We are presently adequately funded due to increase in licensees and market condition. As market changes, so will the decrease in the revenue change. We must continue to address this issue as market conditions could change rapidly.
- For present level of performance.

4. Is the Alabama Real Estate Commission is adequately staffed?

 8 Yes 1 No Unknown No Opinion

- Generally yes, but we are still in process of filling vacancies.
- As currently authorized
- We are adding staff to meet the demands created by rapid growth in number of licensees and in numbers seeking licenses.
- The AREC will be adequately staffed upon filling vacancies.

Commission Member Questionnaire

- We still have a few vacancies to fill.
- However, with the increase of licensees, staffing needs may change.
- We are working on the staffing that has been authorized and trying to fill those positions. We also are addressing the issue of retirement of some key staff and what would affect the commission. We have secured a new investigator.
- I see a need for more field auditors and investigators.

5. What is the purpose of your fiscal year end balance of unobligated funds?

- Carrying a positive balance due to good market information enables us to be prepared for down times.
- The excess funds that are carried over have been generated in an upside economy. We must carry funds over to meet our needs when the economy turns down again.
- (A) Funds facilitate and initiate identified and unidentified projects. (B) Real estate is a cyclic business and funds from positive growth times are required to cover the turn-down cycles.
- Ours is a cyclical business and these funds will enable us to continue to provide services when income is reduced by a falling market.
- The fiscal year end balance of unobligated funds will be used for economic down turn, to fund projects specified by the Commission, for advertising for unlicensed activities, and for training instructors when legislature dictates the implementation of changes to the law.
- (A) To sustain agency operations when the economy turns. (B) To fund any projects & initiatives - one required by legislative changes.
- (A) To insure that the operation can be sustained in economic downturn. (B) To fund Commission initiatives and projects that serves to protect consumers. (C) Implement any changes passed by the legislature.
- Commission must keep adequate funds to anticipate the down turn in the numbers of exams taken and license requests. We have recently experienced upswing that will not continue as interest rates and market dictates the economics of the commission.
- Expanding personal and education sessions for licensed Real Estate Schools.

Licensees

A questionnaire was sent to 100 licensees. Fifty-four (54) licensees responded as follows:

1. Do you think regulation of your profession by the Alabama Real Estate Commission is necessary to protect public welfare?

52 Yes No Unknown 2 No Opinion

- I feel they are people are using the system even they work. It owes taxes on us.

2. Do you think any of the Alabama Real Estate Commission's laws, rules, and policies are an unnecessary restriction on the practice of your profession?

11 Yes 41 No 1 Unknown 1 No Opinion

- Except, I disagree with the regulation requiring equal or greater size of company's name on all my ads & signs since I pay 100% of these costs and a lot of my calls then go to agents who don't pay ad costs. I am paying for institutional ad costs for the company.
- Continuing education for commercial realtors is unnecessary, especially when you've been in the business 20+ years.

3. Do you think any of the Alabama Real Estate Commission requirements are irrelevant to the competent practice of your profession?

13 Yes 34 No 3 Unknown 4 No Opinion

- Continuing education. Please change the amount of hours for commercial realtors. It seems that most of the litigation relates to residential real estate.

4. Are you adequately informed by the Commission of changes to and interpretations of Commission positions, policies, rules and laws?

31 Yes 9 No 9 Unknown 5 No Opinion

- Somewhat – Need to be posted on web page of changes in a timely matter.

5. Has the Alabama Real Estate Commission performed your licensing and renewal in a timely manner?

53 Yes No 1 No Opinion

Licensee Questionnaire

6. Do you consider mandatory continuing education necessary for competent practice?

43 Yes 8 No _____ Unknown 2 No Opinion

1 written response only

- Cont. ed. is a way to inform realtors of changes in laws, but much of the time I spend in CE classes is a waste of time – even with the best of teachers.
- Definitely. Even as it stands, we still have a lot of agents who can't properly complete a contract offer form. Some of these folks should be screened more.
- Classes are a joke & waste of time. To have any meaning a test should be given at the end of each session... you don't pass your license is revoked until such time as a passing grade is obtained.
- The teacher need better raises. Even kids don't want the education.

7. Has the Alabama Real Estate Commission approved sufficient providers of continuing education to ensure your reasonable access to necessary continuing education hours?

43 Yes 7 No 2 Unknown 2 No Opinion

- I would be in favor of even more extensive and stricter testing to make agents more knowledgeable and professional.

8. What do you think is the most significant issue(s) currently facing your profession in Alabama and what is the Alabama Real Estate Commission doing to address the issue(s)?

15 No Response

- Credit bureaus reporting incorrect, mortgage and banks using credit scoring systems. Not being able to pull equity out of homes in which you put in due to a score and computer program. People losing homes due to Federal Regulations to high & no adjustment to score due to any circumstance divorce, hardship etc, illness. Investors are cashing on others equities! Timely manner of reporting not sufficient or accurate without writing letters to bureaus to correct scores all wrong. Vendor Report every 3 mo. not fast enough to change score to get consideration or other bond.
- N/A
- Ethical practice. AREC provides classes which should be mandated as is risk management.
- Identity theft and record control to prevent liability to agents and brokers. I do not know of any programs through AREC that address identity theft.
- Ethics – regulates as much as possible requires informing of clients & customers of right and responsibilities.
- How does the AREC regulate the level of service provided to consumers by company's dba "O" commission real estate?

Licensee Questionnaire

- Trying to enforce every agent to be a member of the Realtors Board – Some do not like Board ethics.
- I believe the course & testing should be improved. I do not believe the test is difficult enough or comprehensive enough. Too many realtors are working that have no guidance & no clue what they are doing. Contract writing should be a mandatory class for all new realtors.
- None
- For Sale by Owners listing in the MLS. They can list a For Sale by Owners Dot Com. I am pleased that Alabama is trying to block this by requiring service if it is made MLS.
- If an agent is listing a home & also showing home the loyalty seems to lay w/the buyer not seller. I know they have giving up private information to buyers that negatively reflects on the seller.
- Education of agents or all licensees and code of ethics for everyone.
- We need to have total & complete property disclosure. Commission is doing nothing that I can tell.
- Competition from web marketing groups not restricted by same rules and regs. Continuing repetitious expenses for CE, Lic, etc. Unknown.
- Out of state internet companies are accessing our listing information, posting it, and asking for referral fees for customers attracted to their websites. Most are non-licensed companies. If these companies want to participate in the Alabama real estate market, they should be licensed and regulated.
- A. Property insurance crisis (homeowners, condo, etc)
B. Not Sure
- Discount Brokerage. Don't know
- With the influx of so many new, young realtors, the commission should have high standards for ethical practice and adaptable continuing ed. courses.
- Advertising/marketing standards
- I really don't have an answer
- The new professional agents & brokers who do not follow the R/E Commission rules & regulations. They do as they please with no fear of being held accountable. In our area there are bill boards with no company name, no agent name & only the agent's cell phone #. Would like electronic key boxes to be made mandatory so there is a record as who enters & the time entered.
- Business ethics, not sure
- Association health care. Rising insurance cost – unknown –
- The banking business remains in the banking business & Real Estate Agents to continue handling real estate transactions. The commission seems to be lobbying to keep the above statement enforced.
- Litigation – little or nothing being done
- Health insurance
- The biggest issue I am facing with my profession is the dues that we have to pay yearly to the Wiregrass Board of realtors and on top of this the \$32.00 a mth to access MLS.

Licensee Questionnaire

- Nothing, not even helping the poor people period. They just helping the rich people
- Disclosure to buyers. Enforcement of RESPA. RE professionals should not take part in any settlements services for a transaction they are representing.
- There are several issues that affect realtors. The Commission has address most of these issues by contacting us and having us contact our political leaders.
- Keeping banks from being in Real Estate with “their own” R/E agents, home inspectors, home repair people, & possibility their own appraisers. Too much conflict of interest. The buyers will not be adequately represented. I’m not sure of all the actions being taken.
- Education is #1. There are individuals out there who do not know or abide with license law. Maybe license law should be required more often.
- Environmental liabilities/hazards. CE training opportunities, but not requirements.
- Selling of property by none licensed people.
- Rising insurance cost along the coast.
- There are too many incompetent realtors. Raise the test score up to at least 85 to pass, and post lic should include working with another realtor for a period of time.
- I don’t think there should be an increase of CEU hours. I feel like 15 every 2 years is enough. I believe the commission does a good job.
- Being able to obtain E &O insurance at a reasonable rate, with having past occurrences that proved to be faultless.
- Keeping agents in line, educated, honest and trustworthy.

9. Do you think the Alabama Real Estate Commission and its staff are satisfactorily performing their duties?

42 Yes 1 No 9 Unknown 2 No Opinion

- I do believe a closer eye should be kept on local real estate associations & their practices.

10. Has any member of the Alabama Real Estate Commission or its staff asked for money (other than normal fees), services, or any other thing of value in return for performing an Alabama Real Estate Commission service for you?

 Yes 54 No

- They are well off. The poor need you all help.

Complainants

Questionnaires were sent to 100 complainants. Forty-nine (49) responded.

1. Was receipt of your complaint acknowledged?

48 Yes 1 No _____ Unknown

- I called the Real Estate Commission.
- After you were made to do it
- Never contacted by human

If yes, approximately how long after you filed your complaint were you contacted by the Alabama Real Estate Commission?

6 Immediately 13 Within 10 days 6 Within 20 days
7 Within 30 days 10 More than 30 days 5 Unknown
2 No Response

- I was not contacted but it was not necessary for them to call me on this particular matter.
- Made to respond

2. Was the employee who responded to your complaint knowledgeable and courteous?

2 Knowledgeable 13 Courteous 9 Neither 18 Both 7 No response

- Not courteous at all

3. Did the Alabama Real Estate Commission communicate the results of investigating your complaint to you?

40 Yes 7 No _____ Unknown 2 No Response

- You do nothing and are a joke
- Traded calls – never did receive written response
- I don't believe the complaint was investigated.
- The results we got from the Real Estate Commission were simply stated as this. If the price difference between the closing documentation and the sales contract was refunded, then they felt there was no reason to conduct any further investigation.
- By way of form letter.
- Don't know – gave a politically correct scripted answer

Complainant Questionnaire

4. Do you think the Alabama Real Estate Commission did everything it could to resolve your complaint?

14 Yes 32 No 2 Unknown 1 No Response

- You do nothing and make sure the law protects bad agents
- Sent me a form rejection letter
- We were not given the opportunity to give a statement on just “how” our money was finally refunded by XXXXX Realty. It was refunded with a contingency that we sign released documentation that was back dated to a date much earlier than the date that we were finally called in to his office. To us, this was an act of fraud on the part of the realty company. The Real Estate Commission also was not concerned that we had to either agree to the price that was not on our contract at closing, or the whole closing would have been cancelled. As the buyer had flown in from out of state, we felt that we had no other option, but to raise the commission. If our realtor had been present, this problem could have been avoided.
- It did resolve my complaint but did not explain why the local Huntsville Board failed to act when notified twice about the problem in writing.
- Absolutely no
- The Commission was prompt and courteous, but not helpful in solving our contract problem.

5. Were you satisfied with your dealings with the Alabama Real Estate Commission?

14 Yes 33 No 1 Unknown 1 No Response

- With the response but not with how the Realtor was dealt with. She continued to be difficult and not helpful.
- I don't know what I would have done with out them. I thank them for everything they did.
- The Commission never resolved my complaint. I am still waiting which I have 2 years to settle the complaint. Please investigate my complaint further. Thanks.
- They are a total joke & waste! We are right now in court for the same reason I contacted them.
- Joke
- I filed complaints to protest an out of state realtor who sold a property having full knowledge of a lien – with lien posted on front door. The Commission advised this broke no law. (1) We don't need another “know-nothing” commission. (2) If this is legal then there is no law and order.
- XXXX XXXX, XXXX XXXX and XXXX XXXX were very professional, informed and attentive to all of concerns.
- I now believe that AL R. E. Commission is only interested in protecting real estate brokers. My case was straight forward. 10 minutes of research by

Complainant Questionnaire

commission would provide proof. Individuals do not have power to produce records. Shame on commission.

- I had a contract (signed) – but buyer through his agent (XXXX) gave 24 hours notice would not close. We had already vacated, etc. XXXX misled situation. The \$500 earnest money should have come to me. As of today 1-23-07, I have not received a penny.
- I did not see any effort put forth to investigate the complaint or take action against the realtor.
- The Commission found the Realtor/Broker guilty, suspended her license for 6 months and fined her. When she appealed they dropped the fine and suspended her license to 30 days! They gave her credit for the time already suspended. It was a joke. Although she was found unquestionably guilty, she received no real punishment at all. Me, her victim had no compensation for my loss at all! The local real estate assoc. wanted me to testify and write letters to them against her, so they could kick her out of the organization. They had money problems with her. But everything was to help or further all real estate organizations. There is nothing to help the public at all. We were falsely led to believe Alabama had a recovery fund that all realtors have to pay into. But it's a false hope. There was no way we could access the fund as a public citizen, even though I had a loss over \$8,000. You are all for show and for yourselves, a paper tiger.
- Not particularly, but as they did not wish to continue, we felt that there was nothing else that we could do.
- It was useless. The real estate agent to my view was unethical and it cost me \$500.00 to get the remainder of my deposit back. The Commission is utterly useless.
- They only seemed interested after indicating that I would get an attorney otherwise they were trying to discourage me from filing. The second person I spoke with was pleasant and did help.
- The Commission failed to address the concerns and briskly disposed of our complaint with little or no investigation. The Commission employee's tone and language conveyed to me that he had no intent to address our concerns. His communication style could be described as discourteous and condescending at the very least. After the five minute conversation with me to advise of the receipt of my complaint, there was no further communication until I received a letter stating there was no further action to be taken on behalf of the Commission.
- I still felt the realtor intentionally delayed payment of earnest money and I would have to see evidence to convince me he had collected it when it came due.
- I have enclosed my letter RE: my complaint & frankly I still do not understand why no action was taken to remove this dishonest agent from further opportunity to steal from the public. Thanks.
- I did achieve results, but when a realtor blatantly ignores obtaining a contract to list \$1.5 million worth of property and sticks a for sale sign up to call her if interested she needs to be fined appropriately (\$1,000) or so.
- GREAT JOB!!!

APPENDICES

SMART Budget Reports

| | | | | | | |
|-------------------------------------|--|------|---|----------------|-------------------------------|------------------|
| State of Alabama EBO Form No. 4b | | 2006 | AGENCY BUDGET REQUEST STRATEGIC PLAN SUMMARY | | AGENCY AREC Agency No, 333 | |
| AGENCY | AI Real Estate Commission | | | ACTUAL FY04 | BUDGET FY05 | ESTIMATE FY06 |
| PROGRAM | Professional & Occupational Licensing and Regulation (\$100 thousands) | | | \$ 2,313 | \$ 3,291 | \$ 3,673 |
| ACTIVITY 1 | Licensing and Regulation of Real Estate Licensees | | | | | |
| MISSION | To protect the public through the licensing and regulating of Real Estate licensees.(Code 34-27-Art.1-3) | | | | | |
| VISION | Promote professional responsibility and competency of licensees to ensure public confidence | | | | | |
| VALUES | We value staff contribution to exceed customer expectation. We value excellence in producing agency services. We value providing reliable information We value ideas/innovations that contribute to effectiveness and efficiency. We value the public's input concerning our services. | | | | | |
| GOAL(S) | To provide timely and high-quality services to every client. (Gov. Priority) | | | | | |
| | To ensure that only qualified applicants enter the profession. | | | | | |
| | To maintain essential information on all Real Estate licensees practicing in Alabama | | | | | |
| | To protect public by training instructors, by improving Real Estate Education programs and deveoping consumer education . | | | | | |
| | To resolve all license law complaints in a timely and complete manner. | | | | | |
| WORKLOAD | Number of applications for licensure will increase (no. applicants) | | | 4,725 | 5,000 | 5,250 |
| | Number of complaints from public about licensees (no complaints) | | | 5,462 | 6,300 | 5,800 |
| | Number of formal complaints under jurisdiction license law will decrease (no. complaints) | | | 40 | 50 | 50 |
| | Number of Education Audits will increase (no audits) | | | 300 | 400 | 500 |
| | Number of audits of Escrow Accounts will increase (no. audits) | | | 526 | 650 | 700 |
| | Number of Real Estate Licensees will increase. (no. Licenses) | | | 28,800 | 27,800 | 30,000 |
| CRITICAL ISSUES | | | | | | |
| Internal | Loss of experienced staff because of retirement. | | | | | |
| External | Legislation initiated and promoted by industry that impact AREC resources. | | | | | |
| OBJECTIVES | | | | | | |
| Spending | Increase spending to attain quality workers and resources. (% increase) | | | \$ 2,313 | \$ 3,291 | \$ 3,673 |
| Staffing | Add staff to increase licensing, auditing and enforcement. (No. of FTE staff) | | | | 32 | 41 |
| Efficiency | Maintain services at a cost of less than \$125.00 per licensee. (cost/licensees) | | | 80.00 | 118.00 | 122.00 |
| Quality | Reduce number of complaints through increase of licensee education. (per cent reduced) | | | | | 8.00% |
| STRATEGIES | 1. Provide regular instructor training programs . 2. Create more on line applications 3. Publish AREC Newsletters and Educator Newsletter quarterly 4. Create a survey form to obtain information on complainant satisfaction. | | | | | |

| Smart Quarterly Performance Report | | | | | | | | | | | |
|---|------------------------------|------------------|---------------|------------------|---------------|------------------|---------------|------------------|---------------|------------------|---------------|
| Fiscal Year: 2006 | | | | | | | | | | | |
| Agency: 333 Real Estate Commission | | | | | | | | | | | |
| Org: | | | | | | | | | | | |
| Program: 653 PRO AND OCCU LICENSING AND REG | | | | | | | | | | | |
| Activity: | | | | | | | | | | | |
| Performance Measures | | First Quarter | | Second Quarter | | Third Quarter | | Fourth Quarter | | Annual | |
| Workload/Cost Factor | Performance Indicator | Projected | Actual | Projected | Actual | Projected | Actual | Projected | Actual | Projected | Actual |
| WC1: Number of applications for licensure will increase | no. of applicatns | 1,315 | 1,930 | 1,515 | 2,082 | 1,220 | 2,007 | 1,200 | 953 | 5,250 | 6,972 |
| WC2: Number of complaints from public about licensees | no. of complaints | 1,450 | 1,382 | 1,450 | 1,653 | 1,450 | 1,805 | 1,450 | 1,880 | 5,800 | 6,720 |
| WC3: Number of formal complaints under jurisdiction license law will decrease | no. of complaints | 10 | 19 | 15 | 20 | 15 | 21 | 10 | 25 | 50 | 85 |
| WC4: Number of Education Audits will increase (CE) | no. of audits | 50 | 111 | 100 | 113 | 150 | 112 | 200 | 24 | 500 | 360 |
| WC5: Number of audits of Escrow Accounts will increase | no. of audits | 150 | 99 | 200 | 148 | 200 | 119 | 150 | 128 | 700 | 494 |
| WC6: Number of Real Estate Licensees will increase | no. of licensees | 20,000 | 30,000 | 5,000 | 31,969 | 2,000 | 32,366 | 3,000 | 33,195 | 30,000 | 31,883 |
| Spending | Performance Indicator | Projected | Actual | Projected | Actual | Projected | Actual | Projected | Actual | Projected | Actual |
| SP1: Spending will increase to attain quality workers and resources | % increase | 12% | 6% | 12% | 11% | 12% | 9% | 12% | 21% | 12% | 12% |
| Staffing | Performance Indicator | Projected | Actual | Projected | Actual | Projected | Actual | Projected | Actual | Projected | Actual |
| ST1: Add staff to increase licensing, auditing and enforcement | no. of FTE staff | 31 | 31 | 33 | 32 | 36 | 32 | 44 | 36 | 44 | 36 |
| Efficiency | Performance Indicator | Projected | Actual | Projected | Actual | Projected | Actual | Projected | Actual | Projected | Actual |
| EF1: Maintain services at cost of less than \$125.00 per licensee. | (Cost licensees) | 122 | 77.0 | 122 | 62 | 122 | 108 | 122 | 82 | 122 | 82 |
| Quality | Performance Indicator | Projected | Actual | Projected | Actual | Projected | Actual | Projected | Actual | Projected | Actual |
| QU1: Reduce number of complaints through increase of licensee education | per cent reduced | 0 | 5% | 0.08 | 0% | 0.08 | 0% | 0.08 | 0% | 0.08 | 1% |

| |
|--|
| How have policy decisions and budget determinations made by the governor and the legislature in the fiscal year 2005-06 affected your agency in meeting its desired accomplishments and services? |
| None to be cited for this period. |
| What administrative improvements did your agency make in fiscal year 2005-06 and what potential improvements do you foresee for future years? Include suggested changes in legislation or administrative procedures which would aid your agency in these improvements. |

2007 SMART Operations Plan

| | |
|---------------------|--------------------------------------|
| Agency/ Org | 333 - Real Estate Commission |
| Organization | - |
| Program | 653 - PRO AND OCCU LICENSING AND REG |
| Activity | - |

| | |
|----------------|--|
| Mission | To protect the public through the licensing and regulating of Real Estate licensees. (Code 34-27-Article 1 General Provisions) |
| Vision | To insure public confidence in Real Estate Transactions. |
| Values | Effective management of our resources, Excellent customer service, Innovation, and Honesty and integrity. |

Goals

- G1: To protect consumers (GP-5)
- G2: To be recognized as among the best Real Estate Commissions (GP-1)
- G3: To continuously improve the effectiveness and efficiency of programs and operations. (GP-1)
- G4: To continuously improve our service to and communications with licensees. (GP-1)
- G5: To employ, train and reward a competent, diverse, motivated, and committed staff. (GP-1)
- G6: To effectively and fairly administer the law (GP-5)

Critical Issues

- Internal** ICI1: Staff depth/understaffed (G2)
- Internal** ICI2: Providing consistent, reliable and courteous customer service (G4)

- External** ECI1: Set personnel classifications (G2)
- External** ECI2: License law needs to keep up with business practice changes (G1)
- External** ECI3: Non-traditional competition/banks in real estate/changes in industry structure (G1)

Strategies

- 1). Hire and Train competent people to replace retiring staff (G5)
- 2). Train and monitor Staff in customer satisfaction (G4)
- 3). Assess need for license law amendments to keep up with business practices of the real estate industry. (G3)

2007 SMART Operations Plan

| Workloads | | | | | | | Performance Indicator |
|---|-----------|-------|----------|-------|-----------|-------|-----------------------|
| Number Real Estate Licensees | | | | | | | Counted on Sept 30 |
| FY 07 Projected: 34,000 FY 07 Target: 35,250 | | | | | | | |
| FY07 Quarterly Projections: | 1 st Qtr: | 33000 | 2nd Qtr: | 33750 | 3 rd Qtr: | 34500 | 4 th Qtr: 35250 |
| Number written complaints from public about licensees | | | | | | | Number |
| FY 07 Projected: 230 FY 07 Target: 200 | | | | | | | |
| FY07 Quarterly Projections: | 1 st Qtr: | 50 | 2nd Qtr: | 50 | 3 rd Qtr: | 50 | 4 th Qtr: 50 |
| Percent online renewals | | | | | | | Online/total |
| FY 07 Projected: 0.8 FY 07 Target: 68% | | | | | | | |
| FY07 Quarterly Projections: | 1 st Qtr: | 70% | 2nd Qtr: | 69% | 3 rd Qtr: | 68% | 4 th Qtr: 65% |
| Number audits of escrow accounts | | | | | | | number |
| FY 07 Projected: 51 FY 07 Target: 800 | | | | | | | |
| FY07 Quarterly Projections: | 1 st Qtr: | 200 | 2nd Qtr: | 200 | 3 rd Qtr: | 200 | 4 th Qtr: 200 |
| Number school audits | | | | | | | number |
| FY 07 Projected: 100 FY 07 Target: 550 | | | | | | | |
| FY07 Quarterly Projections: | 1 st Qtr: | 100 | 2nd Qtr: | 150 | 3 rd Qtr: | 150 | 4 th Qtr: 150 |
| Number formal complaints | | | | | | | Number |
| FY 07 Projected: 51 FY 07 Target: 80 | | | | | | | |
| FY07 Quarterly Projections: | 1 st Qtr: | 20 | 2nd Qtr: | 20 | 3 rd Qtr: | 20 | 4 th Qtr: 20 |

| Objectives | | | | | | | Performance Indicator |
|--|-----------|---------|----------|--------|-----------|--------|--|
| Spending To efficiently use resources | | | | | | | FY 07 expenditures - FY 06 expenditures divided by FY 06 |
| FY 07 Projected: 0.072 FY 07 Target: 12% | | | | | | | |
| FY07 Quarterly Projections: | 1 st Qtr: | 10% | 2nd Qtr: | 11% | 3 rd Qtr: | 11% | 4 th Qtr: 12% |
| Increase spending as necessary | | | | | | | \$ |
| FY 07 Projected: 3,908,707 FY 07 Target: 3,714,083 | | | | | | | |
| FY07 Quarterly Projections: | 1 st Qtr: | 1126775 | 2nd Qtr: | 986103 | 3 rd Qtr: | 890387 | 4 th Qtr: 710818 |
| Staffing Maintain staffing ratio per licensees | | | | | | | licensees/employees |
| FY 07 Projected: 773 FY 07 Target: 888 | | | | | | | |
| FY07 Quarterly Projections: | 1 st Qtr: | 917 | 2nd Qtr: | 888 | 3 rd Qtr: | 885 | 4 th Qtr: 860 |

2007 SMART Operations Plan

| | | | | | | | |
|-----------------------------|--|-----|-----------------|-----|------------------|-----|---|
| Staffing | Maintain necessary staffing levels | | | | | | # FTE |
| FY 07 Projected: | 44 | | | | | | FY 07 Target: 41 |
| FY07 Quarterly Projections: | 1 st Qtr: | 36 | 2nd Qtr: | 38 | 3 rd Qtr: | 39 | 4 th Qtr: 41 |
| Efficiency | To efficiently use resources | | | | | | expenditures/licensees |
| FY 07 Projected: | 115 | | | | | | FY 07 Target: 27 |
| FY07 Quarterly Projections: | 1 st Qtr: | 34 | 2nd Qtr: | 29 | 3 rd Qtr: | 26 | 4 th Qtr: 20 |
| | Written complaints handled within 3 months | | | | | | % handled |
| FY 07 Projected: | 0.85 | | | | | | FY 07 Target: 85% |
| FY07 Quarterly Projections: | 1 st Qtr: | 90% | 2nd Qtr: | 80% | 3 rd Qtr: | 85% | 4 th Qtr: 85% |
| Quality | Customers input will show service to exceed their expectations | | | | | | Customer service is not measurable at this time |
| FY 07 Projected: | 0.3 | | | | | | FY 07 Target: 0 |
| FY07 Quarterly Projections: | 1 st Qtr: | 0 | 2nd Qtr: | 0 | 3 rd Qtr: | 0 | 4 th Qtr: 0 |
| | Licenses processed within 2 days | | | | | | percent of time |
| FY 07 Projected: | 0.95 | | | | | | FY 07 Target: 95% |
| FY07 Quarterly Projections: | 1 st Qtr: | 90% | 2nd Qtr: | 98% | 3 rd Qtr: | 97% | 4 th Qtr: 95% |

2007 SMART Operations Plan

| Source of Funds | | | |
|----------------------------------|---|--------------------|-------------------|
| Fund Code | Fund Name | Requested FY 07 | Budgeted FY 07 |
| 0371 | Al Real Estate Commission Revenue Fund | \$3,508,707 | \$3,623,707 |
| 0371 | Act 2006 - 335 - 5% COLA | \$0 | \$90,376 |
| 0372 | Al Real Estate Commission Recovery Fund | \$400,000 | \$400,000 |
| Total of all Funds Listed Above: | | \$3,908,707 | \$4,114,083 |

Statutes

CHAPTER 27. REAL ESTATE BROKERS.

REFERENCES

CROSS REFERENCES

As to Broker Compensation for Sale, Lease, or Conveyance of Commercial Real Estate, see
Division 19 of Article 5 of Chapter 11 of Title 35.

ARTICLE 1. GENERAL PROVISIONS.

ANNOTATIONS

CASENOTES

Generally 1

Constitutionality 2

Purpose 3

Scope and applicability 4

1. Generally

This chapter is a valid exercise of police power. *Cooper v. Johnston*, 283 Ala. 565, 219 So.2d 392 (Ala.1969).

2. Constitutionality

Chapter is valid exercise of police power of the state and is not unconstitutional on ground that the real estate business is not subject to legislative regulation. *State v. Polakow's Realty Experts*, 243 Ala. 441, 10 So.2d 461 (Ala.1942), certiorari denied 63 S.Ct. 1155, 319 U.S. 750, 87 L.Ed. 1705. Brokers 1

3. Purpose

This chapter was not designed to impose a license tax as a revenue measure merely, but was designed to regulate the business of brokers and real estate salesmen, to protect the public against fraud and imposition and require a license as evidence of qualification and fitness. *Marx v. Lining*, 231 Ala. 445, 165 So. 207 (1935); *Wellden v. Roberts*, 37 Ala.App. 1, 67 So.2d 69 (1951), aff'd 259 Ala. 517, 67 So.2d 75; *Waldrop v. Langham*, 260 Ala. 82, 69 So.2d 440 (1953); *Bickley v. Van Antwerp Realty Corp.*, 271 Ala. 117, 122 So.2d 275 (1959).

This chapter was enacted under the police power designed to regulate the real estate business and to protect the public against fraud and imposition. *Faulkner v. Stapleton Ins. & Realty Corp.*, 266 Ala. 437, 96 So.2d 761 (1957); *Bickley v. Van Antwerp Realty Corp.*, 271 Ala. 117, 122 So.2d 275 (1959); *General Mut. Ins. Co. v. Pledger*, 280 Ala. 400, 194 So.2d 557 (1967).

The object of this chapter is to protect sellers and buyers of Alabama real estate from unethical practices of unregulated brokers which take place in Alabama. *Richland Development Co. v. Staples*, 1961, 295 F.2d 122.

4. Scope and applicability

Scope of chapter is broad and envisions all persons who might suffer from fraud and imposition of an unscrupulous licensee, whether broker or salesman. *General Mut. Ins. Co. v. Pledger*, 280 Ala. 400, 194 So.2d 557 (Ala.1967).

In order for a contract to be governed by this chapter and subject to penalties provided thereby, the contract must come within purview of statute. *Rattray v. W.P. Brown & Sons Lumber Co.*, 29 Ala.App. 93, 192 So. 285 (Ala.App.1939), certiorari denied 238 Ala. 548, 192 So. 288.

Cited in *Dillard v. Pan-American Invest., Inc.*, 347 So.2d 990 (Ala.1977).

§ 34-27-1. Short title. [References](#) [Annotations](#)

This chapter may be cited as the Alabama Real Estate License Law of 1951.
(Acts 1951, No. 422, p. 745, § 1; Acts 1971, No. 2485, p. 3966, § 1; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1.)

REFERENCES

RESEARCH REFERENCES

Forms


Am. Jur. Pl. & Pr. Forms Brokers § 3, Statutory References.

ANNOTATIONS

CASENOTES

Generally 1

1. Generally

This chapter requires that a real estate salesperson be licensed under a qualifying broker. A qualifying broker is held responsible to the commission and to the public for the acts of each salesman licensed under him. *Church v. Conlon-Tanner Corp.*, 483 So.2d 383 (Ala.1985).
Brokers  42

Cited in *Shook v. Davis-Day Timber Co.*, 331 So.2d 667 (Ala.1976).

§ 34-27-2. Definitions; exemptions from chapter. [Historical Notes](#) [References](#) [Annotations](#)

(a) For purposes of Articles 1 and 2 of this chapter, the following terms shall have the respective meanings ascribed by this section:

(1) Associate broker. Any broker other than a qualifying broker.

(2) Broker. Any person licensed as a real estate broker under the provisions of Articles 1

and 2 of this chapter.

(3) Commission. The Alabama Real Estate Commission, except where the context requires that it means the fee paid to a broker or salesperson.

(4) Commissioner. A member of the commission.

(5) Company. Any sole proprietorship, corporation, partnership, branch office, or lawfully constituted business organization as the Legislature may provide for from time to time, which is licensed as a company under Articles 1 and 2 of this chapter.

(6) Engage. Contractual relationships between a qualifying broker and an associate broker or salesperson licensed under him or her whether the relationship is employer-employee, independent contractor, or otherwise.

(7) Inactive license. A license which is being held by the commission office by law, order of the commission, at the request of the licensee, or which is renewable but is not currently valid because of failure to renew.

(8) Licensee. Any broker, salesperson, or company.

(9) License period. That period of time beginning on October 1 of a year designated by the commission to be the first year of a license period and ending on midnight September 30 of the year designated by the commission as the final year of that license period.

(10) Person. A natural person.

(11) Place of business.

a. A licensed broker living in a rural area of this state who operates from his or her home, provided that he or she sets up and maintains an office for the conduct of the real estate business, which shall not be used for living purposes or occupancy other than the conduct of the real estate business. The office shall be used by the broker only and not as a place of business from which any additional licensee operates under his or her license. The office shall have a separate business telephone, separate entrance, and be properly identified as a real estate office.

b. All licensees located within the city limits or police jurisdiction of a municipality shall operate from a separate office located in the city limits or police jurisdiction. The office shall have a business telephone, meet all other regulations of the Real Estate Commission, and be properly identified as a real estate office. Hardship cases may be subject to waiver of this regulation upon application and approval by the commission.

c. All business records and files shall be kept at the place of business as required by law or Real Estate Commission rules.

(12) Qualifying broker. A broker under whom a corporation, partnership, or branch office is licensed, or a broker licensed to do business as a sole proprietorship who is responsible for supervising the acts of the company or proprietorship and all real estate licensees licensed therewith.

(13) Recovery fund. The Alabama Real Estate Recovery Fund.

(14) Salesperson. Any person licensed as a real estate salesperson under Articles 1 and 2 of this chapter.

(b) The licensing requirements of Articles 1 and 2 of this chapter shall not apply to any of the following persons and transactions:

(1) Any owner in the managing of, or in consummating a real estate transaction involving, his or her own real estate or the real estate of his or her spouse or child or parent.

(2) An attorney-at-law performing his or her duties as an attorney-at-law.

(3) Persons acting without compensation and in good faith under a duly executed power

of attorney authorizing the consummation of a real estate transaction.

(4) Persons or a state or federally chartered financial institution acting as a receiver, trustee, administrator, executor, or guardian; or acting under a court order or under authority of a trust instrument or will.

(5) Public officers performing their official duties.

(6) Persons performing general clerical or administrative duties for a broker so long as the person does not physically show listed property.

(7) Persons acting as the manager for an apartment building or complex. However, this exception shall not apply to a person acting as an on-site manager of a condominium building or complex; or

(8) Persons licensed as time-share sellers under Article 3 of this chapter performing an act consistent with that article.

(9) Transactions involving the sale, lease, or transfer of cemetery lots.

(Acts 1951, No. 422, p. 745, § 3; Acts 1963, No. 290, p. 734, § 1; Acts 1971, No. 2485, p. 3966, § 3; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1; Acts 1982, No. 82-231, p. 282, § 1; Acts 1983, No. 83-516, p. 781, § 1; Acts 1984, No. 84-282, p. 472, § 1; Acts 1985, No. 85-750, § 1; Acts 1989, No. 89-284, p. 447, § 3; Acts 1992, No. 92-177, p. 305, § 3; Acts 1996, No. 96-791, p. 1471, § 1; Act 2003-298, p. 701, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1996 amendment, effective May 29, 1996, in subsection (a), rearranged the subdivisions so that the defined terms appear in alphabetical order and renumbered them accordingly, and in subdivision (4), as so renumbered, substituted "Commissioner" for "Commission"; and made nonsubstantive changes.

The 2003 amendment, effective June 18, 2003, in subdivision (5) inserted "sole proprietorship," deleted "or" preceding "branch" and inserted ", or lawfully constituted business organization as the Legislature may provide for from time to time, which is".

REFERENCES

ADMINISTRATIVE CODE

19 Ala. Admin. Code 790-X-1-.03, Real Estate Board; General Provisions: License Requirements.

19 Ala. Admin. Code 790-X-1-.04, Real Estate Board; General Provisions: Clerical/Office Employees.

ANNOTATIONS

CASENOTES

Generally 1


Effect of lack of license on contract 3


"Real estate broker" 2

1. Generally


Broker is a fiduciary and holds a position of trust and confidence. He cannot put himself in a position antagonistic to his principal's interest, by fraudulent conduct, acting adversely to his client's interests, or by failing to communicate information he may possess or acquire which is or may be material to his employer's advantage, or otherwise. *Cooper & Co., Inc. v. Bryant*, 440 So.2d 1016 (Ala.1983).

2. "Real estate broker"

Corporation selling its own realty is not "real estate broker" and corporate employee selling real estate for corporation is not a "real estate salesman" and is not required to have a salesman's license. *Strumpf v. State*, 31 Ala.App. 409, 18 So.2d 104 (Ala.App.1944). Brokers  3

Under an agreement whereby defendant promised to pay plaintiff a commission of a certain percent on purchase price of all standing timber located by plaintiff and brought to defendant's attention and purchased by defendant, plaintiff, while meeting terms of defendant's promise, was not acting as a "real estate broker" within the meaning of this section. *Rattray v. W.P. Brown & Sons Lumber Co.*, 29 Ala.App. 93, 192 So. 285 (Ala.App.1939), certiorari denied 238 Ala. 548, 192 So. 288. Brokers  42

3. Effect of lack of license on contract

A contract whereby defendant agreed to pay a commission to plaintiff on purchase price of all standing timber located and brought to defendant's attention by plaintiff and purchased by defendant was not void because plaintiff did not have a license, since plaintiff was not a "real estate broker" within meaning of this section requiring a license. *Rattray v. W.P. Brown & Sons Lumber Co.*, 29 Ala.App. 93, 192 So. 285 (Ala.App.1939), certiorari denied 238 Ala. 548, 192 So. 288. Brokers  42

Cited in *Waldrop v. Langham*, 260 Ala. 82, 69 So.2d 440 (1953); *Faulkner v. Stapleton Ins. & Realty Corp.*, 266 Ala. 437, 96 So.2d 761 (1957); *King v. Earley*, 274 Ala. 116, 145 So.2d 831 (1962); *Adair v. Alabama Real Estate Comm'n*, 53 Ala.App. 621, 303 So.2d 119 (Civ. App. 1974); *Dillard v. Pan-American Invest., Inc.*, 347 So.2d 990 (Ala.1977); *Davis v. English*, 377 So.2d 144 (Ala.Civ.App.1979); *Holloway v. Jackson*, 412 So.2d 774 (Ala.1982).

§ 34-27-3. Nonresident may not act except in cooperation with licensed broker of state; written co-brokerage agreement to be filed. [References](#) [Annotations](#)

(a) A licensed broker of another state may act as co-broker with a licensed broker of this state by executing a written agreement specifying each parcel of property covered by the agreement if the state in which the nonresident broker is licensed offers the same privileges to licensees of this state.

(b) Whenever an Alabama broker enters into a co-brokerage agreement with a nonresident broker to perform in Alabama any of the acts described in Section 34-27-30 the Alabama broker shall file within 10 days with the commission a copy of each such written agreement. By signing the agreement, the nonresident broker agrees to abide by Alabama law, and the rules and regulations of the commission; and further agrees that civil actions may be commenced against him in any court of competent jurisdiction in any county of this state in which a claim may arise.

(Acts 1951, No. 422, p. 745, § 7; Acts 1963, No. 290, p. 734, § 1; Acts 1971, No. 2485, p. 3966, § 7; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1; Acts 1978, No. 654, p. 932; Acts 1983, No. 83-516, p. 781, § 1; Acts 1985, No. 85-750, p. 1204, § 1; Acts 1988, No. 88-214, p. 315, § 3.)

REFERENCES

ADMINISTRATIVE CODE

19 Ala. Admin. Code 790-X-1-.05, Real Estate Board; General Provisions: Out-of-State Co-Brokerage Agreement.

LIBRARY REFERENCES

American Digest System:

Brokers  1, 3.

Corpus Juris Secundum:

C.J.S. Brokers §§ 7, 14-24.

ANNOTATIONS

CASENOTES

Generally 1

Cooperative agreement 3

Purpose 2

1. Generally

This section clearly provides that a person must be licensed as a real estate broker in this state before he can auction real estate. This requires the Alabama broker to be the "auctioneer" or crier of the property at the sale. *Adair v. Alabama Real Estate Commission*, 53 Ala.App. 621, 303 So.2d 119 (Ala.Civ.App.1974).

2. Purpose

Intent of legislature was not to permit out-of-state people to auction property in Alabama merely by entering into a cooperating agreement with an Alabama broker. *Adair v. Alabama Real Estate Commission*, 53 Ala.App. 621, 303 So.2d 119 (Ala.Civ.App.1974).

3. Cooperative agreement

One of the principal incidents of a cooperating agreement would be the sharing of the fee for the auctioning of property in Alabama. *Adair v. Alabama Real Estate Commission*, 53 Ala.App. 621, 303 So.2d 119 (Ala.Civ.App.1974).

There are aspects of a cooperating agreement warranting participation by the out-of-state broker so as to justify his part of the fee, but the actual crying of the property is not one of them. *Adair v. Alabama Real Estate Commission*, 53 Ala.App. 621, 303 So.2d 119 (Ala.Civ.App.1974).

Cited in *Faulkner v. Stapleton Ins. & Realty Corp.*, 266 Ala. 437, 96 So.2d 761 (1957); *Georgia Asso. of Realtors v. Alabama Real Estate Com.*, 678 F.Supp. 854 (M.D.Ala.1987).

§ 34-27-4. Real Estate Commission Revenue Fund and Real Estate Commission Proportionate Fund. [Historical Notes](#) [References](#)

All fees, fines, charges, or other money, except as provided in Section 34-27-31, and except as provided in this section for multi-year licenses, collected by the commission shall be deposited in the State Treasury to the credit of the Real Estate Commission Revenue Fund and shall be disbursed by the state Comptroller on order of the executive director at the direction of the commission. A proportionate share of all money collected by the commission as license fees during each fiscal year of a multi-year license period or during the renewal period immediately preceding that first year, and all fees collected for research and education, shall be reserved in the State Treasury in the Real Estate Commission Proportionate Fund by the state Comptroller to be disbursed quarterly to the Real Estate Research and Education Center with the remainder to be disbursed for commission expenses incurred in that fiscal year or the subsequent fiscal years of that license period. The proportion for each fiscal year shall be determined by dividing the amount of money collected by the commission as license fees each fiscal year or during the renewal period immediately preceding the first year by the number of years within the multi-year license period. These sums may be invested by the State Treasurer in any investments which are legal for domestic life insurance companies under the laws of this state. Any interest or other income from investments in the proportionate fund shall be deposited into the Real Estate Commission Revenue Fund for expenditure by the commission. All other money including penalty fees collected by the commission shall be disbursed during the fiscal year in which they are collected. The state Comptroller and State Treasurer are directed to pay all expenses incurred by the commission in performing its responsibilities and exercising its authority from the Real Estate Commission Revenue Fund in the State Treasury on warrants of the state Comptroller drawn on the State Treasury on order of the executive director. The commission may not incur expenses that exceed the total fees and charges collected and paid into the State Treasury; or that exceed the amount appropriated by the Legislature. No funds shall be withdrawn or expended except as budgeted and allotted in accordance with Sections 41-4-80 through 41-4-96. All money remaining unexpended in the Real Estate Commission Revenue Fund at the end of each fiscal year shall be retained by the commission for the following fiscal year.

(Acts 1951, No. 422, p. 745, § 11; Acts 1953, No. 513, p. 647; Acts 1963, No. 290, p. 734; Acts 1971, No. 2485, p. 3966, § 11; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1; Acts 1978, No. 654, p. 932, § 1; Acts 1979, No. 79-690, p. 1221, § 1; Acts 1983, No. 83-516, p. 781, § 1; Acts 1985, No. 85-750, p. 1204, § 1; Acts 1992, No. 92-177, p. 305, § 3; Acts 1995, No. 95-679, p. 1483, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1995 amendment, which became effective without the Governor's signature under § 125 of the constitution on August 1, 1995, rewrote this section.

REFERENCES

LIBRARY REFERENCES

American Digest System:

Brokers ☒3.

Corpus Juris Secundum:

C.J.S. Brokers §§ 14-24.

§ 34-27-5. County list of licensees. [References](#)

The commission shall on the request of the probate judge of any county of this state provide the judge with a list of persons who are licensed by the commission and who reside in that county.

(Acts 1951, No. 422, p. 745, § 15; Acts 1971, No. 2485, p. 3966, § 15; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1; Acts 1985, No. 85-750, p. 1204, § 1.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Brokers ☒3.

Corpus Juris Secundum:

C.J.S. Brokers §§ 14-24.

§ 34-27-6. Real estate courses. [Historical Notes](#) [References](#) [Annotations](#)

(a) The commission may approve and regulate schools that offer commission approved prelicense, postlicense, and continuing education courses.

(b) The commission may approve, sponsor, contract for or conduct, or assist in sponsoring or conducting real estate courses for licensees, may charge fees, and may incur and pay the necessary expenses in connection therewith.

(c) The commission may approve and regulate instructors who teach the commission approved prelicense, postlicense, and continuing education courses. The commission shall establish and collect fees as determined necessary, not to exceed fifty dollars (\$50) per instructor annually, to approved instructors who teach commission approved courses.

(d) The commission may approve courses and establish and collect fees as determined necessary, not to exceed one hundred dollars (\$100) per application, to review each course.

(e) The commission may establish one-year or multi-year approval periods for schools and instructors.

(f) The commission shall promulgate rules and regulations as necessary to accomplish the purpose of this section in accordance with the Administrative Procedure Act.

(Acts 1951, No. 422, p. 745, § 16; Acts 1971, No. 2485, p. 3966, § 16; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1; Acts 1985, No. 85-750, p. 1204, § 1; Acts 1996, No. 96-791, p. 1471, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1996 amendment, effective May 29, 1996, designated the existing text as subsection (b) and in such subsection, as so designated, inserted "may charge fees,"; and added subsections (a), (c), (d), (e), and (f).

REFERENCES

ADMINISTRATIVE CODE

19 Ala. Admin. Code 790-X-1-.06 through 790-X-1-.11, 790-X-1-.14 through 790-X-1-.19, 790-X-1-.21, Real Estate Board; General Provisions.

19 Ala. Admin. Code 790-X-2-.03, Real Estate Board; Licensure: Issuance Of Temporary And Original Salesperson Licenses.

LIBRARY REFERENCES

American Digest System:

Brokers 3.

Corpus Juris Secundum:

C.J.S. Brokers §§ 14-24.

ANNOTATIONS

CASENOTES

Cited in American Real Estate Institute, Inc. v. Alabama Real Estate Com., 605 F.2d 931 (5th Cir. Ala.1979).

§ 34-27-7. Real Estate Commission -- Created; composition; qualifications of members; appointment; terms; compensation; organization; executive director and assistant executive director generally; seal; records; immunity from suit. [Historical Notes](#)

[References](#) [Annotations](#)

(a) There is created the Alabama Real Estate Commission. The commission shall consist of nine members appointed by the Governor with the advice and consent of the Senate as hereinafter provided. The Governor's appointments to the commission, except for the appointment of the consumer member made pursuant to subsection (e), shall be made from a list of three persons nominated by the governing body of the Alabama Professional Real Estate Society or trade association which has the largest licensee membership, as evidenced by the filing of a verified list of paid members with the Secretary of State within 10 days of April 6, and annually by December 31 of each year thereafter. At least one of the persons nominated for each commission seat shall not be a member of the Real Estate Society or trade association. The Governor shall appoint one of the three nominated persons within 30 days following receipt of the list. If the Governor does not make an appointment within 30 days, the said Real Estate Society or trade association shall provide the Governor a list of three additional nominees. The Governor, upon receipt of the second list of nominees, shall appoint one of the six nominees within 30 days following receipt of the nominees. Appointments made at times when the Senate

is not in session shall be effective ad interim. Any appointment made by the Governor while the Senate is in session shall be submitted not later than the third legislative day following the date of appointment. Any appointment made while the Senate is not in session shall be submitted not later than the third legislative day following the reconvening of the Legislature.

(b) Ad interim appointments may be made by the Governor when the Legislature is not in session only for vacancies occurring by reason of death or resignation of a board member. Ad interim appointments shall be confirmed by the Senate at the next following regular or special session of the Legislature. Failure by the Senate to confirm shall result in a vacancy on the board that shall be filled by appointment by the Governor and confirmation by the Senate while the Legislature is in session. Any vacancy not acted upon shall remain a vacancy until it is filled at a subsequent session of the Legislature in the manner prescribed in this section.

(c) Each of the original seven appointees and their successors shall have been a resident and citizen of this state for at least 10 years prior to his or her appointment and whose vocation for at least 10 years shall have been that of a real estate broker or real estate salesperson. No person convicted of a violation of any federal or state real estate license law shall be eligible to serve. Not more than one member from any United States Congressional District shall be appointed to serve at the same time. The members of the commission shall serve five-year terms. On and after April 7, 1988, no member shall serve for more than two consecutive terms of office, except, however, each member shall hold office until his or her successor is appointed by the Governor and confirmed by the Senate. The period of time any member serves after the expiration of his or her term of office while awaiting the appointment and Senate confirmation of his or her successor shall not be considered as a consecutive term of office in determining the two consecutive terms of office limitation herein provided. All appointments shall expire on September 30 of the final year of a term, or on the date a successor to the member is appointed and confirmed. If a member does not serve his or her full term, the Governor shall appoint, in the same manner as original appointments are made, subject to confirmation by the Senate, a member to serve the unexpired portion of the term.

(d) On September 30, 1988, the Governor shall appoint one new member to the commission, subject to the confirmation of the Senate, who shall be a Black member who meets all of the other requirements of subsection (c), who shall serve no more than two consecutive terms of office, who shall be a full voting member, and who may be appointed from any congressional district in the state. Each successor Black member shall be appointed from a different congressional district, to be rotated equally among the remaining congressional districts.

(e) On October 1, 1996, the Governor shall appoint one new member to the commission, subject to the confirmation of the Senate, who shall be a consumer member. The consumer member of the commission shall serve no more than two consecutive terms of office, shall be a full voting member, and shall be initially appointed from any congressional district in the state. Each successor consumer member shall be appointed from a different congressional district, on a rotating basis, among the remaining congressional districts. The consumer member shall meet all of the following requirements, that he or she:

- (1) Is 21 years of age or older.
- (2) Has been a resident and citizen of this state for at least 10 years prior to appointment.
- (3) Is a registered voter in this state.
- (4) Has no felony convictions.
- (5) Is the owner of real property.
- (6) Has not been a licensed real estate broker or salesperson for the 10 years preceding

appointment.

(7) Is not related to, by blood or marriage, or employed by, a real estate licensee.

(f) On the appointment of a new commissioner, the commission shall meet and select from its members a chair.

(g) Each member of the commission shall receive as full compensation three hundred dollars (\$300) per month. The members of the commission, its staff, and attorneys shall receive the same per diem and travel allowance paid to state employees for each day they meet to conduct the official business of the commission.

(h) The commission may employ an executive director and an assistant executive director, both of whom shall be exempted from the classified service under the general laws of the state, and other staff members necessary to discharge its duties and administer this chapter. The executive director and assistant executive director shall be employed on the basis of their education, experience, and skills in administration and management. The commission shall advertise to seek quality applicants possessing the qualifications and shall conduct interviews of the top applicants. The assistant executive director shall act as and have authority of the executive director in his or her absence. The commission shall determine the duties and fix the compensation of the executive director, assistant executive director, and other staff members, subject to the general laws of the state.

(i) The commission shall adopt a seal by which it shall authenticate records and documents. Copies of all records and documents in the office of the commission duly certified and authenticated by the seal of the commission shall be received in evidence in all courts equally and with the same effect as the original. All public records kept in the office of the commission shall be open to public inspection during reasonable hours and under reasonable circumstances.

(j) No commissioner shall be liable for damages resulting from any act performed in carrying out his or her duties as a commissioner.

(Acts 1951, No. 422, p. 745, § 4; Acts 1971, No. 2485, p. 3966, § 4; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1; Acts 1978, No. 654, p. 932, § 1; Acts 1979, No. 79-690, p. 1221, § 1; Acts 1981, No. 81-386, p. 572, § 1; Acts 1982, No. 82-231, p. 282, § 1; Acts 1983, No. 83-516, p. 781, § 1; Acts 1985, No. 85-750, p. 1204, § 1; Acts 1988, No. 88-214, p. 315, § 3; Acts 1989, No. 89-284, p. 447, § 3; Acts 1992, No. 92-177, p. 305, § 3; Acts 1996, No. 96-791, p. 1471, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1996 amendment, effective May 29, 1996, in subsection (a), in the second sentence substituted "nine" for "eight", and in the third sentence inserted ", except for the appointment of the consumer member made pursuant to subsection (e),"; in subsection (c), substituted "his or her" for "his" in three places; redesignated subsections (e) through (i) as subsections (f) through (j), respectively, and added a new subsection (e); and made nonsubstantive changes.

Code Commissioner's Notes

Section 2 of Acts 1989, No. 89-284 provides: "The existence and functioning of the Real Estate Commission, created and functioning pursuant to sections 34-27-1 through 34-27-69, Code of Alabama 1975, is hereby continued, and said code sections are hereby expressly preserved."

Acts 1992, No. 92-177, § 2 provides: "The existence and functioning of the Alabama Real Estate Commission, created and functioning pursuant to Section 34-27-1 to 34-27-38, inclusive, Code of Alabama 1975, is continued, and those code sections are expressly preserved."

Acts 1996, No. 96-283, § 2 provides: "The existence and functioning of the Alabama Real Estate Commission, created and functioning pursuant to Sections 34-27-1 to 34-27-38, inclusive, Code of Alabama 1975, is continued, and those code sections are expressly preserved."

Act 2000-128, § 2 provides: "The existence and functioning of the Alabama Real Estate Commission, created and functioning pursuant to Sections 34-27-1 to 34-27-88, inclusive, Code of Alabama 1975, is continued, and those code sections are expressly preserved."

Act 2004-83, § 2 provides: "The existence and functioning of the Alabama Real Estate Commission, created and functioning pursuant to Sections 34-27-1 to 34-27-101, inclusive, Code of Alabama 1975, is continued, and those code sections are expressly preserved."

REFERENCES

CROSS REFERENCES

As to the Real Estate Commission Building Authority, see §§ 41-10-420 et seq.

ADMINISTRATIVE CODE

19 Ala. Admin. Code 790-X-1-.01, Real Estate Board; General Provisions: Organization.

LIBRARY REFERENCES

American Digest System:

Brokers ☒3.

Corpus Juris Secundum:

C.J.S. Brokers §§ 14-24.

RESEARCH REFERENCES

Treatises and Practice Aids

Alabama Law of Damages § 23:16, Nonstate Agencies.

ANNOTATIONS

CASENOTES

Generally 1

1. Generally

Appeal from decree entered in quo warranto proceeding to determine right of real estate commission to hold office was properly dismissed as moot where challenged member's term on the commission had expired shortly before appeal was argued and there was therefore no longer any justiciable case or controversy between the parties. *State ex rel. Eagerton v. Corwin*, 359 So.2d 767 (Ala.1977). Appeal And Error ☒ 781(5)

Cited in *Danner v. Crawford*, 527 So.2d 711 (Ala.1988).

§ 34-27-8. Real Estate Commission -- Quorum; rules and regulations; agency disclosure clause. [Historical Notes](#) [References](#) [Annotations](#)

(a) A majority of the commission members shall constitute a quorum for the conduct of commission business. The commission may adopt and enforce all rules and regulations pursuant to the state administrative procedure statutes necessary for the administration of this chapter, and to otherwise do all things necessary and convenient for effecting this chapter.

(b) In addition to the powers granted in this section, the commission may adopt and enforce rules and regulations governing the requirements of agency disclosure by licensed brokers and salespersons.

(c) Each offer to purchase prepared after August 1, 1998, shall have prominently displayed the following AGENCY DISCLOSURE clause which shall be completed and initialed as indicated:

The listing company _____ is:

(Two blocks may be checked)

- ☐ An agent of the seller.
- ☐ An agent of the buyer.
- ☐ An agent of both the seller and buyer and is acting as a limited consensual dual agent.
- ☐ Assisting the _____ buyer _____ seller as a transaction broker.

The selling company _____ is:

(Two blocks may be checked)

- ☐ An agent of the seller.
- ☐ An agent of the buyer.
- ☐ An agent of both the seller and buyer and is acting as a limited consensual dual agent.
- ☐ Assisting the _____ buyer _____ seller as a transaction broker.

(Acts 1951, No. 422, p. 745, § 19; Acts 1971, No. 2485, p. 3966, § 19; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1; Acts 1985, No. 85-750, p. 1204, § 1; Acts 1988, No. 88-214, p. 315, § 3; Acts 1989, No. 89-284, p. 447, § 3; Acts 1992, No. 92-177, p. 305, § 3; Acts 1995, No. 95-211, p. 341, § 10; Act 98-618, p. 1359, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1995 amendment, effective October 1, 1996, in subsection (c) substituted "after October 1, 1996" for "after April 6, 1989," deleted "either in pre-printed form or typed in or hand-written in" following "prominently displayed," added "which shall be completed and initialed as indicated," and rewrote the agency disclosure clause.

The 1998 amendment, effective August 1, 1998, in subsection (c) rewrote the agency disclosure clause.

Code Commissioner's Notes

In 1998, the Code Commissioner in subsection (c) inserted fill-in-the-blank lines and checkoff boxes to properly format the disclosure form and to correct a clerical error in the enrolling process.

REFERENCES

ADMINISTRATIVE CODE

19 Ala. Admin. Code 790-X-1-.01 through 790-X-1-.21, Real Estate Board; General Provisions.
19 Ala. Admin. Code 790-X-3-.01 through 790-X-3-.14, Real Estate Board; Disciplinary
Actions.
19 Ala. Admin. Code 790-X-2-.01 through 790-X-2-.04, 790-X-2-.07, 790-X-2-.13 through 790-
X-2-.21, Real Estate Board; Licensure.

LIBRARY REFERENCES

American Digest System:

Brokers 3.

Corpus Juris Secundum:


C.J.S. Brokers §§ 14-24.

ANNOTATIONS

CASENOTES

Generally 1

1. Generally

Regulation promulgated by state commission pursuant to the authority reposed in it by this section is to be enforced as if it were a duly enacted statute, so long as the regulation is not unreasonable or inconsistent with the statute from whence it was born. *Adair v. Alabama Real Estate Commission*, 53 Ala.App. 621, 303 So.2d 119 (Ala.Civ.App.1974). Administrative Law And Procedure  423.1

Cited in *American Real Estate Institute, Inc. v. Alabama Real Estate Com.*, 605 F.2d 931 (5th Cir. Ala.1979).

§ 34-27-9. Real Estate Commission -- Bond of director and executive secretary. Repealed by Acts 1985, No. 85-750, § 2, effective May 29, 1985. § 34-27-10. Chapter cumulative.

The requirements of this chapter shall be in addition to the requirements of existing or future laws or ordinances of any state, county or municipality taxing, licensing or regulating real estate brokers or salesmen.

(b) A licensee under this chapter shall not be subject to the requirements of Section 40-12-150 when he sells, offers to sell or advertises for sale realty situated in another state or county.

(c) Licensees under this chapter shall be exempt from the provisions of Section 5-19-22. (Acts 1951, No. 422, p. 745, § 21; Acts 1963, No. 290, p. 734, § 1; Acts 1971, No. 2485, p. 3966, § 21; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1; Acts 1985, No. 85-750, p. 1204, § 1.)

§ 34-27-11. Penalties. [References](#) [Annotations](#)

(a) Any person or corporation which violates any provision of this chapter commits a Class A misdemeanor and, on conviction, shall be punished accordingly.

(b) Any person who files with the commission any notice, statement or other document or

information required under the provisions of this chapter which is false or untrue or contains any material misstatement of fact commits a Class A misdemeanor and, on conviction, shall be punished accordingly.

(Acts 1951, No. 422, p. 745, § 18; Acts 1963, No. 290, p. 734, § 1; Acts 1971, No. 2485, p. 3966, § 1; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1; Acts 1983, No. 83-516, p. 781, § 1; Acts 1984, No. 84-282, p. 472, § 1; Acts 1985, No. 85-750, p. 1204, § 1.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Brokers  5.

Corpus Juris Secundum:

C.J.S. Brokers § 13.

ANNOTATIONS

CASENOTES

Cited in *Faulkner v. Stapleton Ins. & Realty Corp.*, 266 Ala. 437, 96 So.2d 761 (1957); *Richland Development Co. v. Staples*, 295 F.2d 122 (5th Cir. Ala.1961).

ARTICLE 2. LICENSES.

REFERENCES

CROSS REFERENCES

As to revenue licenses for real estate brokers and agents, see §§ 40-12-149, 40-12-150.


ANNOTATIONS

CASENOTES

Generally 1

1. Generally

For validity of contract made by unlicensed real estate broker, see *Culverhouse v. Culverhouse*, 420 So.2d 33 (Ala.1982).

Where one engages in activities as a real estate broker without being licensed as a real estate broker, an agreement to pay him compensation for his services is void and unenforceable. *Culverhouse v. Culverhouse*, 420 So.2d 33 (Ala.1982). Brokers  42

It shall be unlawful for any person, partnership, corporation, or branch office, for a fee, commission, or other valuable consideration, or with the intention or expectation of receiving or collecting a fee, commission, or other valuable consideration from another, to do any of the following unless he or she is licensed under Articles 1 and 2 of this chapter:

(1) Sell, exchange, purchase, rent, or lease real estate situated within the State of Alabama.

(2) Offer to sell, exchange, purchase, rent, or lease real estate situated within the State of Alabama.

(3) Negotiate or attempt to negotiate the listing, sale, exchange, purchase, rental, or leasing of real estate situated within the State of Alabama.

(4) List or offer or attempt or agree to list real estate for sale, rental, lease, exchange, or trade situated within the State of Alabama.

(5) Auction, offer, or attempt or agree to auction, real estate situated within the State of Alabama.

(6) Buy or sell or offer to buy or sell, or otherwise deal in options on real estate situated within the State of Alabama.

(7) Aid, attempt, or offer to aid in locating or obtaining for purchase, rent, or lease any real estate situated within the State of Alabama.

(8) Procure or assist in procuring of prospects for the purpose of effecting the sale, exchange, lease, or rental of real estate situated within the State of Alabama.

(9) Procure or assist in the procuring of properties for the purpose of effecting the sale, exchange, lease, or rental of real estate situated within the State of Alabama.

(10) Present himself or herself or be presented as being able to perform an act for which a license is required.

(Acts 1951, No. 422, p. 745, § 2; Acts 1963, No. 290, p. 734, § 1; Acts 1971, No. 2485, p. 3966, § 1; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1; Acts 1983, No. 83-516, p. 781, § 1; Acts 1985, No. 85-750, p. 1204, § 1; Act 2006-601, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 2006 amendment, effective July 1, 2006, in subdivision (9) deleted "or" following the semicolon, in subdivisions (1)-(9) substituted "situated within the State of Alabama." for the semicolon, and made nonsubstantive changes.

REFERENCES

ADMINISTRATIVE CODE

19 Ala. Admin. Code 790-X-1-.03, Real Estate Board; General Provisions: License Requirements.

LIBRARY REFERENCES

American Digest System:

Brokers  3, 42.

Corpus Juris Secundum:

C.J.S. Brokers §§ 14-24, 131-135.

RESEARCH REFERENCES

Forms

Am. Jur. Pl. & Pr. Forms Brokers § 3, Statutory References.

ANNOTATIONS

CASENOTES

Applicability 1

"Auction" 2

Enforceability of contract 4

License requirement as applied to corporations 3

Recovery of commission 5



1. Applicability

These sections are not framed, as they might have been, to apply to all transactions affecting land in the forum state; the coverage is limited to Alabama transactions. *Richland Development Co. v. Staples*, 1961, 295 F.2d 122.

2. "Auction"

"Auction" is public sale of property to highest bidder, by one licensed and authorized for that purpose. *Adair v. Alabama Real Estate Commission*, 53 Ala.App. 621, 303 So.2d 119 (Ala.Civ.App.1974). Auctions And Auctioneers  7

3. License requirement as applied to corporations

A corporation may, in compliance with the requirements of this section, be issued a broker's license, and must have been issued such license in order to be able to enforce a contract calling for payment to it of a broker's commission. *Faulkner v. Stapleton Ins. & Realty Corp.*, 266 Ala. 437, 96 So.2d 761 (Ala.1957). Brokers  3; Brokers  42

Where none of the officers of a corporation have been issued a broker's license, although the corporation had a licensee in its employ, that did not meet the requirements of this section. *Faulkner v. Stapleton Ins. & Realty Corp.*, 266 Ala. 437, 96 So.2d 761 (Ala.1957).

4. Enforceability of contract

As regards recovery of compensation, contract of real estate salesman without license held unenforceable. *Knight v. Watson*, 221 Ala. 69, 127 So. 841 (1930); *Waldrop v. Langham*, 260 Ala. 82, 69 So.2d 440 (1953); *Bickley v. Van Antwerp Realty Corp.*, 271 Ala. 117, 122 So.2d 275 (1959).

The failure of a real estate broker to procure the broker's license required by this section, as under the prior law, renders unenforceable any contract entered into by such broker which provides for payment of a commission. *Faulkner v. Stapleton Ins. & Realty Corp.*, 266 Ala. 437, 96 So.2d 761 (Ala.1957).

5. Recovery of commission

Where the sales of real estate and of personalty were severable, involving two transactions between separate legal entities, the unlicensed broker was entitled to the commission calculated on the sales price of the stock, and the court considered it unnecessary to determine the question of whether an unlicensed broker is precluded from commission when the sale of real estate forms an incident in a single or nonseverable transaction. *Abramson v. Gulf Coast Jewelry & Specialty Co.*, 1971, 445 F.2d 802.

Even if a broker violated this section and was therefore subject to fine and imprisonment, it would not be necessarily inconsistent for him to recover his commission under an executed foreign contract. *Richland Development Co. v. Staples*, 1961, 295 F.2d 122.

Failure of a licensed Missouri real estate broker to obtain a license in Alabama pursuant to this section did not bar recovery of a commission for procuring purchasers of Alabama land, where both the formation of the contract and the major portions of its performance occurred outside Alabama and where the contract was valid and binding in the place where the agreement was made. *Richland Development Co. v. Staples*, 1961, 295 F.2d 122.

If a person acts in violation of the statute governing licensing requirement for real estate brokers, then any agreement to compensate that person for services mentioned in the statute is void and unenforceable. *Ex parte Ledford*, 761 So.2d 990 (Ala.2000), on remand 761 So.2d 995. Brokers ☒ 42

Burden was on plaintiffs, under averments alleging that they were duly licensed agents and seeking to recover commission allegedly due under contract for sale of realty, of showing that they found and tendered purchaser who was ready, willing and able to purchase property on defendant's terms and that they were licensed brokers authorized to procure such purchaser. *Applebaum v. Zeigler*, 246 Ala. 281, 20 So.2d 510 (Ala.1945). Brokers ☒ 84(1); Brokers ☒ 84(2)

Action to recover broker's commission, want of real estate agent's license was a defense that should have been pleaded and proven by defendant. *Garber v. Yeend*, 31 Ala.App. 365, 17 So.2d 874 (Ala.App.1944), certiorari denied 245 Ala. 509, 17 So.2d 875. Brokers ☒ 82(4)

Where vendor brought motion for interpleader against rival claimants to broker's commission, one claimant could not plead that contract between rival claimant and vendor was invalid because rival claimant was not licensed as broker, since his property rights were not affected by invalidity of contract, he being required to prove that he was procuring cause of sale to recover commission. *Marx v. Lining*, 231 Ala. 445, 165 So. 207 (Ala.1935). Interpleader ☒ 12

Cited in *Southern Metal Treating Co. v. Goodner*, 271 Ala. 510, 125 So.2d 268 (1960); *Dorman v. Pan-American Invest., Inc.*, 625 F.2d 605 (5th Cir. Ala.1980); *Liles v. Flatley*, 643 So.2d 947 (Ala.1994).

§ 34-27-31. Recovery Fund created; fees paid to fund; injured party's recovery from fund; procedures, appeals, etc.; licensee to report any legal action taken against him.

[Historical Notes](#) [References](#) [Annotations](#)

(a) The commission shall establish and maintain a Recovery Fund from which an aggrieved party may recover actual or compensatory damages, not including interest and court costs, sustained only within the State of Alabama as a result of conduct of a broker or salesperson in violation of Article 1 or 2 of this chapter or the rules and regulations of the commission.

(b) Notwithstanding any other provision to the contrary, payments from the Recovery Fund

are subject to the following conditions and limitations:

(1) The fund shall not be obligated for the acts or omissions of a broker or salesperson while acting on his or her own behalf or on behalf of his or her child, spouse, or parent regarding property in which he or she or his or her spouse, child, or parent has, or is attempting to acquire, an interest; or for the acts or omissions of an inactive licensee; or for the acts or omissions of a corporation, branch office, or partnership except through its licensed salespersons and brokers as individuals. The fund shall not be obligated for any judgment or settlement resulting from an act or omission of a broker or salesperson committed in conjunction with the marketing or development of a time-sharing project.

(2) Payments for claims based on judgments or settlements against any one person shall not exceed fifty thousand dollars (\$50,000) in the aggregate.

(3) Payments for claims arising out of the same transaction shall not exceed twenty-five thousand dollars (\$25,000) in the aggregate, regardless of the number of claimants.

(4) The fund shall not be liable for payments to a licensee or bonding company unless the licensee or bonding company was a principal party to a real estate transaction on which the judgment was based.

(c)(1) When any person makes application for an original license as a broker or salesperson, he or she shall pay, in addition to all other fees, a fee of thirty dollars (\$30) for deposit in the Recovery Fund. In the event the commission does not issue the license, this fee shall be returned to the applicant.

(2) Any salesperson licensee who has paid the additional fee and who has attained a broker license and has paid the additional broker fee shall be refunded, upon request, one of the additional fees and no other salesperson licensee shall be required to pay an additional fee upon attaining broker status.

(3) Payments made to the Recovery Fund in lieu of bond by a licensee shall be paid only one time when he or she is originally licensed by the commission.

(d) When the balance remaining in the Recovery Fund is less than five hundred thousand dollars (\$500,000), each broker and salesperson shall on order of the commission pay a fee of thirty dollars (\$30) per license for deposit in the Recovery Fund. A licensee on inactive status shall not be required to contribute to the fund at that time. A fee of thirty dollars (\$30) shall be paid at the time a license is activated.

(e)(1) When an aggrieved person commences an action for a judgment which may result in collection from the Recovery Fund, the aggrieved person shall notify the commission in writing, by certified mail, return receipt requested, to this effect at the time of the commencement of the action.

(2) When the commission receives the notice described in subdivision (e)(1), it may enter an appearance, file pleadings and motions, appear at court hearings, defend the action, or take whatever other action it deems appropriate either on the behalf and in the name of the defendant, or in its own name. The commission may also take any appropriate method of review either on behalf and in the name of the defendant, or in its own name. The commission may settle or compromise the claim. Any expenses incurred by the commission in defending, satisfying, or settling any claim shall be paid from the Recovery Fund.

(3) When an aggrieved person recovers a valid judgment in a court of competent jurisdiction against a broker or salesperson on the grounds described in subsection (a) above, which occurred on or after October 1, 1979, the aggrieved person may, on the termination of all proceedings, including reviews and appeals in connection with the judgment, file a

verified claim in the court in which the judgment was entered and, on 10 days' written notice to the commission, may apply to the court for an order directing payment out of the Recovery Fund of the amount unpaid on the judgment.

(4) The court shall proceed on the application immediately and, on hearing, the aggrieved person shall be required to show each of the following:

a. He or she is not the spouse, child, or parent of the debtor, or the personal representative of the spouse, child, or parent.

b. He or she has obtained a judgment, as described in subdivision (e)(3), stating the amount of the judgment and the amount owing on the judgment at the date of the application, and, that in the action, he or she had joined any and all bonding companies which issued corporate surety bonds to the judgment debtor as principal and all other necessary parties.

c. The following items, if recovered by him or her, have been applied to the actual compensatory damages awarded by the court:

1. Any amount recovered from the judgment debtor.
2. Any amount recovered from bonding companies.
3. Any amount recovered in out-of-court settlements.

(5) The court shall order that the Recovery Fund pay whatever sum it finds due under this section.

(6) Should the commission pay from the Recovery Fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensee, all licenses of the licensee may be terminated by the commission. The commission may refuse to issue a new license to the former licensee until he or she has repaid in full, plus interest at the rate of 12 percent a year, the amount paid from the Recovery Fund. A discharge in bankruptcy shall not relieve a person from the penalties and disabilities provided in this section.

(7) If the balance in the Recovery Fund is insufficient to satisfy a duly authorized claim or portion of a claim, the commission shall, when sufficient money has been deposited in the Recovery Fund, satisfy the unpaid claims or portions, plus interest at the rate of 12 percent a year in the order that the claims were originally filed.

(f) The sums received by the commission pursuant to this section shall be deposited into the State Treasury and held in a special fund to be known as the Real Estate Recovery Fund, and shall be held by the commission in trust for carrying out the purposes of the Recovery Fund. These sums may be invested by the State Treasurer in any investments which are legal for domestic life insurance companies under the laws of this state. Any interest or other income from investments of the Recovery Fund shall be deposited in the Real Estate Commission Revenue Fund with one-half being transmitted to the University of Alabama Real Estate Research and Education Center.

(g) The commission may transfer funds one time only from the Real Estate Recovery Fund to the University of Alabama Real Estate Research and Education Center. The amount of the transfer may not reduce the Real Estate Recovery Fund below six hundred thousand dollars (\$600,000).

(h) When, on order of the court, the commission has paid from the Recovery Fund any sum, the commission shall be subrogated to all the rights of the judgment creditor, and all his or her right, title, and interest in the judgment, to the extent of the amount paid from the Recovery Fund, shall be assigned to the commission. Any amount and interest recovered by the commission on the judgment shall be deposited to the fund.

(i) The failure of an aggrieved person to strictly comply with all of the provisions of this section shall constitute a waiver of any rights under this section.

(j) Each licensee shall notify the commission within 10 days after notice to him or her of the institution of any criminal prosecution against him or her, or of a civil summons and complaint against him or her, if the subject matter of the civil complaint involves a real estate transaction or involves the goodwill of an existing real estate business. The notification shall be in writing by certified mail and shall include a copy of the summons and complaint. If a criminal charge is made, it shall include the specific charge made against the licensee together with a copy of any indictment or information alleging the charges.

(k) Each licensee shall notify the commission in writing by certified mail within 10 days after he or she receives notice that any criminal verdict has been rendered against him or her, or that a criminal action pending against him or her has been dismissed, or that a civil action in which he or she was a defendant and which involved a real estate transaction or the goodwill of a real estate business has resulted in a judgment or been dismissed. The notification shall be in writing and shall include a copy of the court order or other document giving the licensee notice.

(Acts 1951, No. 422, p. 745, § 5; Acts 1963, No. 290, p. 734, § 1; Acts 1971, No. 2485, p. 3966, § 5; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1; Acts 1979, No. 79-690, p. 1221, § 1; Acts 1982, No. 82-231, p. 282, § 1; Acts 1983, No. 83-516, p. 781, § 1; Acts 1984, No. 84-282, p. 472, § 1; Acts 1985, No. 85-750, p. 1204, § 1; Acts 1988, No. 88-214, p. 315, § 3; Acts 1992, No. 92-177, p. 305, § 3; Acts 1995, No. 95-679, p. 1483, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1995 amendment, which became effective without the Governor's signature under § 125 of the constitution on August 1, 1995, in the last sentence of subsection (f), substituted "Real Estate Commission Revenue Fund" for "commission fund," substituted "transmitted" for "placed in a separate fund for transmittal," deleted "Chair for" preceding "Real Estate," and substituted "Research and Education Center" for "for research and development"; added subsection (g); and made nonsubstantive changes.

REFERENCES

ADMINISTRATIVE CODE

19 Ala. Admin. Code 790-X-2-.20, Real Estate Board; Licensure: Recovery Fund Fee Exemption.

LIBRARY REFERENCES

American Digest System:

Brokers 4.

Corpus Juris Secundum:

C.J.S. Brokers §§ 6-12.

RESEARCH REFERENCES

Treatises and Practice Aids

ANNOTATIONS

CASENOTES

Liability of broker 2


Liability of real estate recovery fund 1

1. Liability of real estate recovery fund

Legislature did not intend the real estate recovery fund to provide redress for the wrongdoing of licensees while not involved in a real estate transaction. Ex parte Alabama Real Estate Com'n, 447 So.2d 740 (Ala.1984).

By limiting license revocation to wrongful conduct occurring when the licensee performs acts subject to the real estate license law, the legislature has limited the real estate recovery fund by tying it to the violations of the chapter. Ex parte Alabama Real Estate Com'n, 447 So.2d 740 (Ala.1984).

2. Liability of broker

Real estate brokers and salespersons should not be exempt from responsibility for statements and representations they make to induce a purchaser to act, when, under the circumstances, these amount to fraud in a legal sense. Real estate brokers and salespersons are subject to professional standards as established by this section, and should use extreme caution and care in making statements and representations to their clients. Earle, McMillan & Niemeyer, Inc. v. Dekle, 418 So.2d 97 (Ala.1982). Brokers  102

Subsection (b) of this section requires broker to accept responsibility for the actions of all salespersons licensed under him or her. Such responsibility includes supervision of all transactions of the salesman and liability for any damages caused to a party injured by the acts of the salesman in violation of the statutes. Davis v. English, 377 So.2d 144 (Ala.Civ.App.1979).

Cited in General Mut. Ins. Co. v. Pledger, 280 Ala. 400, 194 So.2d 557 (1967); Lumbermens Mut. Casualty Co. v. Louisville Title Ins. Co., 414 F.2d 415 (5th Cir. Ala.1969); Labovitz v. Gulf American Fire & Casualty Co., 47 Ala.App. 412, 255 So.2d 592 (Civ. App. 1971); Davis v. English, 377 So.2d 144 (Ala.Civ.App.1979).

§ 34-27-32. Requirements for license; application; place of business; branch offices; multiple brokers; license; fees. [Historical Notes](#) [References](#) [Annotations](#)

(a) A license for a broker or a salesperson shall be registered to a specific real estate office and shall be issued only to, and held only by, a person who meets all of the following requirements:

(1) Is trustworthy and competent to transact the business of a broker or salesperson in a manner that safeguards the interest of the public.

(2) Is a person whose application or license has not been rejected or revoked in any state within two years prior to date of application on any grounds other than failure to pass a written examination. Any applicant whose license has been revoked shall meet all the requirements imposed on an original applicant for a license and shall not be relicensed

without the approval of the commissioners.

(3) Is at least 19 years old.

(4) Is a citizen of the United States or is an alien with permanent resident status.

(5) Is a person who, if a nonresident, agrees to sign an affidavit stating the following and in the following form:

"I, as a nonresident applicant for a real estate license and as a licensee, agree that the Alabama Real Estate Commission shall have jurisdiction over me in any and all of my real estate related activities the same as if I were an Alabama resident licensee. I agree to be subject to investigations and disciplinary actions the same as Alabama resident licensees. Further, I agree that civil actions may be commenced against me in any court of competent jurisdiction in any county of the State of Alabama.

"I hereby appoint the Executive Director or the Assistant Executive Director of the Alabama Real Estate Commission as my agent upon whom all disciplinary, judicial, or other process or legal notices may be served. I agree that any service upon my agent shall be the same as service upon me and that certified copies of this appointment shall be deemed sufficient evidence and shall be admitted into evidence with the same force and effect as the original might be admitted. I agree that any lawful process against me which is served upon my agent shall be of the same legal force and validity as if personally served upon me and that this appointment shall continue in effect for as long as I have any liability remaining in the State of Alabama. I understand that my agent shall, within a reasonable time after service upon him or her, mail a copy of the service by certified mail, return receipt requested, to me at my last known business address.

"I agree that I am bound by all the provisions of the Alabama Real Estate License Law the same as if I were a resident of the State of Alabama.

Legal signature of applicant"

The commission may reject the application of any person who has been convicted of or pleaded guilty or nolo contendere to a felony or a crime involving moral turpitude.

(b)(1) A person who holds a current real estate salesperson license in another state, including persons who move to and become residents of Alabama, shall apply for a reciprocal salesperson license on a form prescribed by the commission. A person who holds a current broker license in another state, including persons who move to and become residents of Alabama, shall apply for a reciprocal broker license on a form prescribed by the commission. The applicant shall submit proof that he or she has a current real estate license in another state as evidenced by a certificate of licensure, together with any other information required by the commission. Applicants for a reciprocal license shall not be subject to the examination or temporary license requirements of Section 34-27-33. A person who holds a reciprocal license shall show proof of completion of continuing education either by meeting the requirements of Section 34-27-35 or by showing proof that his or her other state license remains active in that state. The fees for issuance and renewal of a reciprocal license shall be the same as those for original licenses pursuant to Section 34-27-35. The recovery fund fee for issuance of a reciprocal license shall be the same as for an original license pursuant to Section 34-27-31.

(2) A person who holds a current Alabama license who moves to and becomes a resident of the state shall within 10 days submit to the commission notice of change of address and all other license status changes.

(c) A person who does not hold a current real estate broker license in another state desiring to be a real estate broker in this state shall apply for a broker's license on a form prescribed by the commission which shall specify the real estate office to which he or she is registered. Along with the application, he or she shall submit all of the following:

- (1) Proof that he or she has had an active real estate salesperson's license in any state for at least 24 months of the 36 month period immediately preceding the date of application.
- (2) Proof that he or she is a high school graduate or the equivalent.
- (3) Proof that he or she has completed a course in real estate approved by the commission, which shall be a minimum of 60 clock hours.
- (4) Any other information requested by the commission.

(d) A person who does not hold a current real estate salesperson license in another state desiring to be a real estate salesperson in this state shall apply for a salesperson's license with the commission on a form prescribed by the commission which shall specify the real estate office to which he or she is registered. Along with the application he or she shall furnish all of the following:

- (1) Proof that he or she is a high school graduate or the equivalent.
- (2) Proof that he or she has successfully completed a course in real estate approved by the commission, which shall be a minimum of 60 clock hours.
- (3) Any other information required by the commission.

(e) An application for a company license for a corporation, partnership, or branch office shall be made by a qualifying broker on a form prescribed by the commission. The qualifying broker shall be an officer, partner, or employee of the company.

(f) An applicant for a company or broker license shall maintain a place of business.

(g) If the applicant for a company or broker license maintains more than one place of business in the state, he or she shall have a company license for each separate location or branch office. Every application shall state the location of the branch office and the name of its qualifying broker. Each branch office shall be under the direction and supervision of a qualifying broker licensed at that address. No person may serve as qualifying broker at more than one location. The qualifying broker for the branch office and the qualifying broker for the corporation, partnership, or sole proprietorship shall share equal responsibility for the real estate activities of all licensees assigned to the branch office.

(h) No person shall be a qualifying broker for more than one company or for a company and on his or her own behalf unless:

- (1) All companies for which he or she is and proposes to be the qualifying broker consent in writing.
- (2) He or she files a copy of the written consent with the commission.
- (3) He or she will be doing business from the same location.

A person licensed under a qualifying broker may be engaged by one or more companies with the same qualifying broker.

(i) A company license shall become invalid on the death or disability of a qualifying broker. Within 30 days after the death or disability, the corporation, or the remaining partners or the successor partnership, if any, may designate another of its officers, members, or salespersons to apply for a license as temporary qualifying broker. The person designated as temporary qualifying broker shall either be a broker or have been a salesperson for at least one year prior to filing the application. If the application is granted, the company may operate under that broker for no more than six months after the death or disability of its former qualifying broker. Unless

the company designates a fully licensed broker as the qualifying broker within the six months, the company license shall be classified inactive by the commission.

(j) The commission may charge any applicant a fee for a criminal record search of the applicant in the same amount as is charged the commission by the Department of Public Safety or other agency for the search.

(k) The commission may charge a fee of ten dollars (\$10) for furnishing any person a copy of a license, certificate or other official record of the commissioner.

(Acts 1951, No. 422, p. 745, § 6; Acts 1963, No. 290, p. 734, § 1; Acts 1971, No. 2485, p. 3966, § 6; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 568, p. 1306, § 1; Acts 1982, No. 82-231, p. 282, § 1; Acts 1983, No. 83-516, p. 781, § 1; Acts 1985, No. 85-750, p. 1204, § 1; Acts 1988, No. 88-214, p. 315, § 3; Acts 1989, No. 89-284, p. 447, § 3; Acts 1992, No. 92-177, p. 305, § 3; Acts 1996, No. 96-791, p. 1471, § 1; Act 2003-298, p. 701, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1996 amendment, effective May 29, 1996, redesignated subsections (b) through (j) as subsections (c) through (k), respectively, and added a new subsection (b); in subsection (c), as so redesignated, in the introductory matter inserted "who does not hold a current real estate broker license in another state", and in subdivision (3) substituted "of 60 clock hours" for "of eight weeks in length, shall meet at least once a week, and shall contain a minimum of 60 classroom hours"; in subsection (d), as so redesignated, in the introductory matter inserted "who does not hold a current real estate salesperson license in another state", and in subdivision (2) substituted "of 60 clock hours" for "of eight weeks in length, shall meet at least once a week, and shall contain a minimum of 45 classroom hours"; in subsection (f), as so redesignated, deleted "in the State of Alabama" following "business"; and made nonsubstantive changes.

The 2003 amendment, effective June 18, 2003, in subdivision (1) of subsection (b) deleted ", and errors and omissions insurance requirements shall be the same as provided in Section 34-27-35.1" following "Section 34-27-31".

REFERENCES

ADMINISTRATIVE CODE

19 Ala. Admin. Code 790-X-3-.01, Real Estate Board; Disciplinary Actions; Change Of Address.

19 Ala. Admin. Code 790-X-2-.01, 790-X-2-.02, 790-X-2-.04, 790-X-2-.06, Real Estate Board; Licensure.

LIBRARY REFERENCES

American Digest System:

Brokers 3.

Corpus Juris Secundum:

C.J.S. Brokers §§ 14-24.

ANNOTATIONS

CASENOTES

Generally 1
Constitutionality 2

1. Generally

Former subsection (d) of this section (now subsection (c)) provides that no license may be granted a salesman unless he lists a licensed broker for whom he will work and broker, by sworn statement, vouches for his reputation and honesty. *Davis v. English*, 377 So.2d 144 (Ala.Civ.App.1979).

2. Constitutionality

Sections 34-27-33(b), 34-27-34(a)(1), and subsections (b), (c) and (e) of this section are unconstitutional in that they violate the Commerce Clause of U.S. Constitution. *Georgia Ass'n of Realtors, Inc. v. Alabama Real Estate Com'n*, 748 F.Supp. 1487 (M.D.Ala.1990).

The in-state place of business requirements set forth in §§ 34-27-32(e), 34-27-33(b) and 34-27-34(a)(1) violate the Commerce Clause of U.S. Constitution. *Georgia Ass'n of Realtors, Inc. v. Alabama Real Estate Com'n*, 748 F.Supp. 1487 (M.D.Ala.1990).

The requirement that an applicant for a broker's license must complete 15 semester credit hours of approved real estate courses if the applicant has not held a salesman's license in Alabama for 24 of the 36 months preceding the application, the requirement that an applicant for a salesman's license must complete an eight-week course taught within Alabama, the requirement that an applicant for a broker's license must maintain a "place of business" in Alabama, the requirement that a salesman must place his or her license with a broker who maintains a "place of business" in Alabama and the requirement that a qualifying broker maintain a place of business in Alabama violate the Commerce Clause. *Georgia Ass'n of Realtors, Inc. v. Alabama Real Estate Com'n*, 748 F.Supp. 1487 (M.D.Ala.1990).

The 15 semester credit hour requirement, in conjunction with the experience and education-in-Alabama limitation, unduly burdens interstate commerce in violation of the Commerce Clause. *Georgia Ass'n of Realtors, Inc. v. Alabama Real Estate Com'n*, 748 F.Supp. 1487 (M.D.Ala.1990).

Cited in *Holloway v. Jackson*, 412 So.2d 774 (Ala.1982); *Georgia Asso. of Realtors v. Alabama Real Estate Com.*, 678 F.Supp. 854 (M.D. Ala.1987).

§ 34-27-33. Written examination; conditions for licensure; issuance of licenses.

[Historical Notes](#) [References](#) [Annotations](#)

(a)(1) In addition to other requirements of this chapter, every applicant for a broker's or salesperson's license shall submit to a reasonable written examination. The commission shall conduct examinations at places and times it prescribes. The commission may contract with an independent testing agency to prepare, grade, or conduct the examination.

(2) The fee shall be seventy-five dollars (\$75) for each examination taken by the applicant. No refund shall be made if an applicant fails the examination. The examination fee shall be paid by certified check, cashier's check, or money order. If an applicant is scheduled and issued a written permit for an examination and fails to appear, one-half of the examination fee shall be forfeited. The provisions of this subdivision shall continue until

October 1, 2001, at which time they shall terminate.

(3) Effective October 1, 2001, and thereafter, the fee for each examination and the provisions for payment and forfeiture shall be as specified in the contract with the independent testing agency.

(b) Within 90 days after passing the examination, the applicant shall secure a qualifying broker and meet all requirements of this chapter and the board shall issue an active license or classify the license as inactive. In order to obtain an active license, the applicant's qualifying broker shall sign and submit to the commission a sworn statement that the applicant is in his or her opinion honest, trustworthy, and of good reputation and that the broker accepts responsibility for the actions of the salesperson as set out in Section 34-27-31. The applicant's qualifying broker shall be licensed in Alabama.

(c)(1) On passing the examination and complying with all other conditions for licensure, a temporary license certificate shall be issued to the applicant. The applicant is not licensed until he or she or his or her qualifying broker actually receives the temporary license certificate. A temporary license shall be valid only for a period of one year following the first day of the month after its issuance.

(2) The holder of a temporary license shall not be issued an original license until he or she has satisfactorily completed a 30-hour post-license course prescribed by the commission. The holder of a temporary license must complete the course within 6 months of issuance of his or her temporary license and have his or her original license issued, otherwise his or her temporary license certificate shall automatically be placed on inactive status by the commission. During the remaining 6 months his or her temporary license is valid, the holder of a temporary license may complete the course and have his or her original license issued. If the holder of a temporary license does not complete the course and have his or her original license issued within one year following the first day of the month after its issuance, the temporary license shall automatically expire and lapse. A temporary license is not subject to renewal procedures in this chapter and may not be renewed.

(3) In order to have a temporary license issued to active status, the applicant shall pay the Recovery Fund fee specified in this chapter. The holder of a temporary license shall, upon satisfactory completion of the course, pay the original license fee specified in this chapter to have his or her original license issued. An applicant for an original license who has paid the Recovery Fund fee specified in this chapter shall not be required to pay another Recovery Fund fee in order to have his or her original license issued.

(4) The holder of an original license who has satisfactorily completed the post license course and whose original license has been issued, shall not be subject to the continuing education requirements in this chapter for the first renewal of his or her original license.

(d) This section shall become effective for licenses issued beginning October 1, 1993.

(Acts 1951, No. 422, p. 745, § 8; Acts 1963, No. 290, p. 734, § 8; Acts 1971, No. 2485, p. 3966, § 8; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1; Acts 1978, No. 654, p. 932, § 1; Acts 1982, No. 82-231, p. 282, § 1; Acts 1983, No. 83-516, p. 781, § 1; Acts 1985, No. 85-750, p. 1204, § 1; Acts 1988, No. 88-214, p. 315, § 3; Acts 1992, No. 92-177, p. 305, § 3; Act 2001-310, p. 391, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 2001 amendment, effective April 25, 2001, in subsection (a) designated subdivisions (1) and (2), added subdivision (3), in subdivision (2) substituted "seventy-five dollars (\$75)" for "\$75.00", and added the final sentence; an in subsection (c) deleted the third sentence.

Code Commissioner's Notes

In 2001, the Code Commissioner, in the first sentence of subdivision (3) of subsection (c) before "temporary license," replaced "his" with "a" for grammatical purposes and designated the last sentence of this section as subsection (d).

REFERENCES

ADMINISTRATIVE CODE

19 Ala. Admin. Code 790-X-2-.02, 790-X-2-.03, Real Estate Board; Licensure.

LIBRARY REFERENCES

American Digest System:

Brokers ☒3.

Corpus Juris Secundum:

C.J.S. Brokers §§ 14-24.

ANNOTATIONS

CASENOTES

Constitutionality 1

1. Constitutionality

Sections 34-27-32(b), (c) and (e), subsection (b) of this section and 34-27-34(a)(1) are unconstitutional in that they violate the commerce clause of the U.S. Constitution. *Georgia Ass'n of Realtors, Inc. v. Alabama Real Estate Com'n*, 748 F.Supp. 1487 (M.D.Ala.1990).

The in-state place of business requirements set forth in §§ 34-27-32(e), 34-27-33(b) and 34-27-34(a)(1) violate the Commerce Clause. *Georgia Ass'n of Realtors, Inc. v. Alabama Real Estate Com'n*, 748 F.Supp. 1487 (M.D.Ala.1990).

The requirement that an applicant for a broker's license must complete 15 semester credit hours of approved real estate courses if the applicant has not held a salesman's license in Alabama for 24 of the 36 months preceding the application, the requirement that an applicant for a salesman's license must complete an eight-week course taught within Alabama, the requirement that an applicant for a broker's license must maintain a "place of business" in Alabama, the requirement that a salesman must place his or her license with a broker who maintains a "place of business" in Alabama and the requirement that a qualifying broker maintain a place of business in Alabama violate the Commerce Clause. *Georgia Ass'n of Realtors, Inc. v. Alabama Real Estate Com'n*, 748 F.Supp. 1487 (M.D.Ala.1990).

Cited in *Faulkner v. Stapleton Ins. & Realty Corp.*, 266 Ala. 437, 96 So.2d 761 (1957).

§ 34-27-34. Who may serve as qualifying broker; responsibility of qualifying broker;

(a)(1) A broker may serve as qualifying broker for a salesperson or associate broker only if licensed in Alabama, his or her principal business is that of a real estate broker, and he or she shall be in a position to actually supervise the real estate activities of the associate broker or salesperson on a full-time basis.

(2) A salesperson or associate broker shall not perform acts for which a license is required unless licensed under a qualifying broker. A qualifying broker shall be held responsible to the commission and to the public for all acts governed by this chapter of each salesperson and associate broker licensed under him or her and of each company for which he or she is the qualifying broker. It shall be the duty of the qualifying broker to see that all transactions of every licensee engaged by him or her or any company for which he or she is the qualifying broker comply with this chapter. Additionally, the qualifying broker shall be responsible to an injured party for the damage caused by any violation of this chapter by any licensee engaged by the qualifying broker. This subsection does not relieve a licensee from liability that he or she would otherwise have.

(3) The qualifying brokers' supervision responsibilities, as prescribed herein, over the real estate activities of associate brokers and salespersons licensed under him or her are not intended to and should not be construed as creating an employer-employee relationship contrary to any expressed intent of the qualifying broker and licensee to the contrary.

(b) Any salesperson or associate broker who desires to change his or her qualifying broker shall give notice in writing to the commission, and shall send a copy of the notice to his or her qualifying broker. The new qualifying broker shall file with the commission a request for the transfer and a statement assuming liability for the licensee. On payment of a fee of twenty-five dollars (\$25), a new license certificate shall be issued to the salesperson or associate broker for the unexpired term of the original license. A fee of twenty-five dollars (\$25) shall also be charged for any of the following license changes:

(1) Change of qualifying broker by a company or sole proprietorship. The fee is paid for the license or licenses on which the current and new qualifying brokers' names appear. In cases where a company has a branch office or offices and the main office qualifying broker is changed, the fee is paid for each branch office license and for the license of each branch qualifying broker.

(2) Change of personal name of a qualifying broker. The fee is paid for the license or licenses on which the current qualifying broker's name appears.

(3) Change of personal name of a salesperson or associate broker. The fee is paid for the license on which the name appears.

(4) Change of business location. The fee is paid for the license or licenses on which the address appears.

(5) Change of business name. The fee is paid for the license or licenses on which the name appears.

(6) Change of status from inactive to active. The fee is paid for each license being changed from inactive to active status. No fee is charged for the change from active to inactive status.

(c) A person who wishes to terminate his or her status as qualifying broker for a licensee may do so by notifying the licensee and the commission in writing and sending the licensee's license certificate to the commission or verifying in writing to the commission that the certificate has

been lost or destroyed.

(d) A person who wishes to terminate his or her status as a qualifying broker for a company may do so by submitting written notice to the company or qualifying broker of the parent company and the commission.

(e) A salesperson or associate broker shall not perform any act for which a license is required after his or her association with his or her qualifying broker has been terminated, or if he or she changes qualifying brokers, until a new active license has been issued by the commission.

(Acts 1951, No. 422, p. 745, § 9; Acts 1963, No. 290, p. 734, § 1; Acts 1971, No. 2485, p. 3966, § 9; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1; Acts 1978, No. 654, p. 932, § 1; Acts 1982, No. 82-231, p. 282, § 1; Acts 1983, No. 83-516, p. 781, § 1; Acts 1985, No. 85-750, p. 1204, § 1; Acts 1988, No. 88-214, p. 315, § 3; Acts 1989, No. 89-284, p. 447, § 3; Acts 1992, No. 92-177, p. 305, § 3; Acts 1996, No. 96-791, p. 1471, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1996 amendment, effective May 29, 1996, in subsection (b), in the first sentence substituted "his or her" for "his", and added the last sentence including subdivisions (1) through (6); and made nonsubstantive changes.

REFERENCES

ADMINISTRATIVE CODE

19 Ala. Admin. Code 790-X-2-.14, 790-X-2-.21, Real Estate Board; Licensure.

LIBRARY REFERENCES

American Digest System:

Brokers  3.

Corpus Juris Secundum:

C.J.S. Brokers §§ 14-24.

ANNOTATIONS

CASENOTES

Generally 1

Constitutionality 2

1. Generally

This chapter requires that a real estate salesperson be licensed under a qualifying broker. A qualifying broker is held responsible to the commission and to the public for the acts of each salesperson licensed under her. *Church v. Conlon-Tanner Corp.*, 483 So.2d 383 (Ala.1985).

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Subsection (d) of this section provides that it shall be unlawful for a salesman to act as a

salesman after his employment has been terminated by the broker under whom he was licensed. *Davis v. English*, 377 So.2d 144 (Ala.Civ.App.1979).

2. Constitutionality

Sections 34-27-32(b), (c) and (e), 34-27-33(b) and subsection (a)(1) of this section are unconstitutional in that they violate the U.S. Constitution. *Georgia Ass'n of Realtors, Inc. v. Alabama Real Estate Com'n*, 748 F.Supp. 1487 (M.D.Ala.1990).

The in-state place of business requirements set forth in §§ 34-27-32(e), 34-27-33(b) and 34-27-34(a) (1) violate the Commerce Clause. *Georgia Ass'n of Realtors, Inc. v. Alabama Real Estate Com'n*, 748 F.Supp. 1487 (M.D.Ala.1990).

The requirement that an applicant for a broker's license must complete 15 semester credit hours of approved real estate courses if the applicant has not held a salesman's license in Alabama for 24 of the 36 months preceding the application, the requirement that an applicant for a salesman's license must complete an eight-week course taught within Alabama, the requirement that an applicant for a broker's license must maintain a "place of business" in Alabama, the requirement that a salesman must place his or her license with a broker who maintains a "place of business" in Alabama and the requirement that a qualifying broker maintain a place of business in Alabama violate the Commerce Clause. *Georgia Ass'n of Realtors, Inc. v. Alabama Real Estate Com'n*, 748 F.Supp. 1487 (M.D.Ala.1990).

The 15 semester credit hour requirement, in conjunction with the experience and education-in-Alabama limitation, unduly burdens interstate commerce in violation of the Commerce Clause. *Georgia Ass'n of Realtors, Inc. v. Alabama Real Estate Com'n*, 748 F.Supp. 1487 (M.D.Ala.1990).

§ 34-27-35. License certificates generally. [Historical Notes](#) [References](#)

(a) The commission shall prescribe the form and content of license certificates issued. Each qualifying broker's license certificate shall show the name and business address of the broker. The license certificate of each active salesperson or associate broker shall show his or her name and address. The license certificate of each active salesperson or associate broker shall be delivered or mailed to his or her qualifying broker. Each license certificate shall be kept by the qualifying broker and shall be publicly displayed at the address which appears on the license certificate.

(b) The commission may establish a one-year or multi-year license period.

(c)(1) The fee for a temporary license shall be one hundred fifty dollars (\$150). The original fee for a broker's license shall be one hundred fifty dollars (\$150) and, beginning with the license period effective October 1, 2002, the renewal fee for a broker's license shall be seventy-five dollars (\$75) per year for each year of the license period. The original fee for each salesperson's license shall be sixty-five dollars (\$65) per year for each year or portion of a year remaining in the respective license period, and the renewal fee for each salesperson's license shall be sixty-five dollars (\$65) per year for each year of the license period. The original fee for each company license shall be sixty-five dollars (\$65) per year for each year or portion of a year remaining in the respective license period, and the renewal fee for each license shall be sixty-five dollars (\$65) per year for each year of the license period.

(2) Beginning with the license period effective October 1, 2004, the renewal fee for a broker's license shall be ninety-five dollars (\$95) per year for each year of the license period.

The original fee for each salesperson's license shall be eighty-five dollars (\$85) per year for each year or portion of a year remaining in the respective license period, and the renewal fee for each salesperson's license shall be eighty-five dollars (\$85) per year for each year of the license period. The original fee for each company license shall be eighty-five dollars (\$85) per year for each year or portion of a year remaining in the respective license period, and the renewal fee for each license shall be eighty-five dollars (\$85) per year for each year of the license period.

(d) The renewal research and education fee shall be two dollars and fifty cents (\$2.50) per year for each year of the license period, and shall be paid at the time of license renewal by all brokers and salespersons in addition to the license renewal fees set out in this section. Collection of this fee shall begin and shall apply to all broker and salesperson renewals on and after August 1, 1996, except that brokers who hold more than one broker's license shall pay the fee for only one license at each renewal.

(e) The original research and education fee shall be thirty dollars (\$30) and shall be paid at the time of all applications received on and after October 15, 1995, for issuance of an original broker's license, and shall be paid at the time of all applications received on and after October 15, 1995, for issuance of a temporary salesperson's license. The original research and education fee shall also be paid by reciprocal salespersons. This is in addition to the original license fees set out in this section. This thirty dollar (\$30) original research and education fee is a one-time fee which no person shall be required to pay more than once.

(f) The license of a salesperson who is subsequently issued a broker's license automatically terminates upon the issuance of his or her broker's license certificate. The salesperson's license certificate shall be returned to the commission in order for a broker's license to be issued. No refund shall be made of any fee or recovery fund deposit pertaining to the salesperson's, broker's, or company's license.

(g) The commission shall prescribe a license renewal form, which shall accompany renewal fees which shall be filed on or before August 31 of the final year of each license period in order for the respective license to be renewed on a timely basis for the following license period. If any of the foregoing are filed during the period from September 1 through September 30 of the final year of a license period, the one hundred fifty dollar (\$150) penalty set out below shall be paid in addition to the renewal fees. Failure to meet this September 30 deadline shall result in the license being placed on inactive status on the following October 1, and the license shall be subject to all reactivation requirements. Reactivations shall be processed in the order received as evidenced by postmark or delivery date. Certified or registered mail may be used for reactivation in these cases. Licensees filing during the period from September 1 of the final year of a license period through September 30 of the initial year of a license period shall pay the required license fee, plus a penalty of one hundred fifty dollars (\$150).

(h) The renewal form shall be mailed by the commission to the licensee's place of business, if an active licensee, or to his or her residence if an inactive licensee, prior to August 1 of the final year of each license period. Each licensee shall notify the commission in writing of any change in his or her business or residence address within 30 days of the change.

(i) Every license shall expire at midnight on September 30 of the final year of each license period. An expired license may be renewed during the 12-month period following the license period for which the license was current. A licensee who fails to renew before the end of the 12-month period following the license period for which the license was issued has a lapsed license, and shall be subject to all requirements applicable to persons who have never been licensed,

however, the commission may upon determination of hardship, allow later renewal upon payment of all fees and penalties. An inactive license must be renewed in the same manner as an active license.

(j)(1) Each applicant for renewal of an active salesperson or broker license issued by the commission shall, on or before September 30 of the final year of each license period, submit proof of completion of not less than 15 clock hours of approved continuing education course work to the commission, in addition to any other requirements for renewal. Failure to meet this deadline shall result in the license being placed on inactive status on the following October 1, and the license shall be subject to all reactivation requirements. Reactivations shall be processed in the order received as evidenced by postmark or delivery date. Certified or registered mail may be used for reactivation in this case. Proof of attendance at the course work, whether or not the applicant attained a passing grade in the course, shall be sufficient to satisfy requirements for renewal. The 15 clock hours' course work requirement shall apply to each two-year license renewal, and hours in excess of 15 shall not be cumulated or credited for the purpose of subsequent license renewals. The commission shall develop standards for approval of courses, and shall require certification of the course work of the applicant.

Time served as a member of the state Legislature during each license renewal period shall be deemed the equivalent of the 15 hours course work and shall satisfy the requirements of this subsection.

(2) This section shall apply to renewals of licenses which expire after September 30, 1986. An applicant for first renewal who has been licensed for not more than one year shall not be required to comply with this section for the first renewal of the applicant's license. Any licensee reaching the age of 65 on or before September 30, 2000, and having been licensed 10 years prior to that date shall be exempt from this section.

(3) Continuing education shall not result in a passing or failing grade.

(k) A licensee may request that the commission issue his or her license to inactive status. Inactive licenses shall be held at the commission office until activated. No act for which a license is required shall be performed under an inactive license.

(Acts 1951, No. 422, p. 745, § 10; Acts 1963, No. 290, p. 734, § 8; Acts 1967, No. 386, p. 973, § 1; Acts 1971, No. 2485, p. 3966, § 10; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1; Acts 1978, No. 654, p. 932, § 1; Acts 1979, No. 79-690, p. 1221, § 1; Acts 1982, No. 82-231, p. 292, § 1; Acts 1983, No. 83-516, p. 781, § 1; Acts 1985, No. 85-750, p. 1204, § 1; Acts 1986, No. 86-298, p. 427, § 1; Acts 1986, No. 86-418, p. 624, § 1; Acts 1988, No. 88-214, p. 315, § 3; Acts 1989, No. 89-284, p. 447, § 4; Acts 1992, No. 92-177, p. 305, § 3; Acts 1995, No. 95-679, p. 1483, § 1; Acts 1996, No. 96-791, p. 1471, § 1; Act 99-518, p. 1140, § 1; Act 2001-310, p. 391, § 1; Act 2003-298, p. 701, § 1; Act 2005-314, 1st Sp. Sess., p. 646, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1995 amendment, which became effective without the Governor's signature under § 125 of the constitution on August 1, 1995, added subsections (d) and (e), and made nonsubstantive changes.

The 1996 amendment, effective May 29, 1996, in subsection (g), in the first sentence inserted ", proof of errors and omissions insurance coverage, if applicable, and proof of completion of not less than 12 clock hours of approved continuing education course work, if applicable," and inserted "all shall", inserted the second through fourth sentences, in the fifth sentence substituted "through September 30 of the initial year of a license period shall pay the required license fee, plus a penalty of sixty-five dollars (\$65)" for "through October 31 of the initial year of the following license period, shall pay a penalty of fifteen dollars (\$15) in addition to the license fee", and deleted the former sixth sentence which read "Any licensee renewing during the period from November 1 through September 30 of the initial year of a license period shall pay the required license fee, plus a penalty of sixty-five dollars (\$65)."; in subsection (i), in the third sentence inserted "has a lapsed license, and" and inserted ", however, the commission may upon determination of hardship, allow later renewal upon payment of all fees and penalties"; in subsection (j), in subdivision (1), in the first sentence substituted "an active" for "a", substituted "August 31 of the final year of each license period" for "the expiration date of his or her license", and inserted "continuing education", and added the second through fifth sentences, and in subdivision (2), in the third sentence substituted "upon reaching the age of 65 and having been licensed 10 years prior to that date" for "who is 65 years of age or greater"; and made nonsubstantive changes.

The 1999 amendment, effective October 1, 2000, in subsections (g) and (j) substituted "15" for "12" throughout; and in subsection (j), in subdivision (2) deleted "upon" following "licensee" and inserted "on or before September 30, 2000,".

The 2001 amendment, effective April 25, 2001, in subsection (c) designated subdivision (1), added subdivision (2), in subdivision (1) added the first sentence, substituted "one hundred fifty dollars (\$150) and beginning with the license period effective October 1, 2002," for "forty-five dollars (\$45) per year for each year or portion of a year remaining in the respective license period," substituted "seventy-five dollars (\$75)" for "forty-five dollars (\$45)", and substituted "sixty-five dollars (\$65)" for "thirty-five dollars (\$35)" in four places; in subsection (e) deleted ", and is in addition to the temporary license fee set out in Section 34-27-33" following "section"; in subsection (f) deleted the third sentence, substituted "penalty" preceding "fee", and inserted ", broker's, or company's"; in subsection (g) added the second sentence, inserted "September 30", substituted "may" for "shall not" substituted "filing" for "who renew", and substituted "one hundred fifty dollars (\$150)" for "sixty-five dollars (\$65)"; and in subsection (j) substituted "may" for "shall not".

The 2003 amendment, effective June 18, 2003, in subsection (g) substituted "which" for ", proof of errors and omissions insurance coverage, if applicable, and proof of completion of not less than 15 clock hours of approved continuing education course work, if applicable, and all"; and in subsection (j), in subdivision (1) substituted "September 30" for "August 31" and deleted the fifth and sixth sentences.

The 2005 amendment, effective November 1, 2005, in subsection (e) inserted the second sentence.

REFERENCES

ADMINISTRATIVE CODE

19 Ala. Admin. Code 790-X-1-.09 through 790-X-1-.14, Real Estate Board; General Provisions.
19 Ala. Admin. Code 790-X-3-.01, Real Estate Board; Disciplinary Actions: Change Of

Address.
19 Ala. Admin. Code 790-X-2-.13, 790-X-2-.15, 790-X-2-.16, 790-X-2-.19, 790-X-2-.21, Real Estate Board; Licensure.

LIBRARY REFERENCES

American Digest System:

Brokers 3.

Corpus Juris Secundum:

C.J.S. Brokers §§ 14-24.

§ 34-27-35.1. Errors and omissions insurance. Repealed by Act 2003-298, p. 701, § 2, effective June 18, 2003. § 34-27-36. Disciplinary action -- Generally. [Historical Notes](#)

[References](#) [Annotations](#)

(a) The commission or its staff may on its own, or on the verified complaint in writing of any person, investigate the actions and records of a licensee. The commission may issue subpoenas and compel the testimony of witnesses and the production of records and documents during an investigation. If probable cause is found, a formal complaint shall be filed and the commission shall hold a hearing on the formal complaint. The commission shall revoke or suspend the license or impose a fine of not less than one hundred dollars (\$100) nor more than two thousand five hundred dollars (\$2,500), or both, or reprimand the licensee in each instance in which the licensee is found guilty of any of the following acts set out in this section. The commission may revoke or suspend a license until such time as the licensee has completed an approved continuing education course and/or made restitution to accounts containing funds to be held for other parties. The commission may also stay the revocation or suspension of a license and require completion of an approved education course and/or the making of restitution to accounts containing funds to be held for other parties.

(1) Procuring or attempting to procure, a license, for himself or herself or another, by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in an application for a license.

(2) Engaging in misrepresentation or dishonest or fraudulent acts when selling, buying, trading, or renting real property of his or her own or of a spouse or child or parent.

(3) Making a material misrepresentation, or failing to disclose to a potential purchaser or lessee any latent structural defect or any other defect known to the licensee. Latent structural defects and other defects do not refer to trivial or insignificant defects but refer to those defects that would be a significant factor to a reasonable and prudent person in making a decision to purchase or lease.

(4) Making any false promises of a character likely to influence, persuade, or induce any person to enter into any contract or agreement.

(5) Pursuing a continued and flagrant course of misrepresentation or the making of false promises through agents or salespersons or any medium of advertising or otherwise.

(6) Publishing or causing to be published any advertisement which deceives or which is likely to deceive the public, or which in any manner tends to create a misleading impression or which fails to identify the person causing the advertisement to be placed as a licensed

broker or salesperson.

(7) Acting for more than one party in a transaction without the knowledge and consent in writing of all parties for whom he or she acts.

(8)a. Failing, within a reasonable time, to properly account for or remit money coming into his or her possession which belongs to others, or commingling money belonging to others with his or her own funds.

b. Failing to deposit and account for at all times all funds belonging to, or being held for others, in a separate federally insured account or accounts in a financial institution located in Alabama.

c. Failing to keep for at least three years a complete record of funds belonging to others showing to whom the money belongs, date deposited, date of withdrawal, and other pertinent information.

(9) Placing a sign on any property offering it for sale, lease, or rent without the consent of the owner.

(10) Failing to voluntarily furnish a copy of each listing, contract, lease, and other document to each party executing the document with reasonable promptness.

(11) Paying any profit, compensation, commission, or fee to, or dividing any profit, compensation, commission, or fee with, anyone other than a licensee or multiple listing service. This subdivision shall not prevent an associate broker or salesperson from owning any lawfully constituted business organization, including, but not limited to, a corporation or limited liability company or limited liability corporation, for the purpose of receiving payments contemplated in this subsection. The business organization shall not be required to be licensed under this chapter, and shall not engage in any other activity requiring a real estate license.

(12) Paying or receiving any rebate from any person in a real estate transaction.

(13) Inducing any party to a contract to break the contract for the purpose of substituting a new contract, where the substitution is motivated by the personal gain of the licensee.

(14) If the licensee is a salesperson or associate broker, accepting a commission or other valuable consideration for performing any act for which a license is required from any person except his or her qualifying broker.

(15) If a qualifying broker or company, allowing a salesperson or associate broker licensed under him or her to advertise himself or herself as a real estate agent without the name or trade name of the qualifying broker or company appearing on the advertising in letters at least as large as the name of the salesperson or associate broker; or if the licensee is a salesperson or associate broker, advertising himself or herself as a real estate agent without the name or trade name of the qualifying broker or company under whom the salesperson or associate broker is licensed appearing on the advertising in letters at least as large as the name of the salesperson or associate broker.

(16) Presenting to the commission, as payment for a fee or fine, a check that is returned unpaid.

(17) Establishing an association, by employment or otherwise, with an unlicensed person who is expected or required to act as a licensee, or aiding, abetting, or conspiring with a person to circumvent the requirements of this chapter.

(18) Failing to disclose to an owner the licensee's intention to acquire, directly or indirectly, an interest in property which he or she or his or her associates have been employed to sell.

(19) Violating or disregarding any provision of this chapter or any rule, regulation, or order of the commission.

(20) If a broker, accepting a "net listing" agreement for sale of real property or any interest therein. A "net listing" is one that stipulates a net price to be received by the owner with the excess due to be received by the broker as his or her commission.

(21) Misrepresenting or failing to disclose to any lender, guaranteeing agency, or any other interested party, the true terms of a sale of real estate.

(22) Failing to inform the buyer or seller at the time an offer is presented that he or she will be expected to pay certain closing costs and the approximate amount of those costs.

(23)a. Having entered a plea of guilty or nolo contendere to, or having been found guilty of or convicted of a felony or a crime involving moral turpitude.

b. Having a final money judgment rendered against him or her which results from an act or omission occurring in the pursuit of his or her real estate business or involves the goodwill of an existing real estate business.

(24) Offering free lots or conducting lotteries for the purpose of influencing a party to purchase or lease real estate.

(25) Failing to include a fixed date of expiration in a written listing agreement or failing to leave a copy of the agreement with the principal.

(26) Conduct which constitutes or demonstrates dishonest dealings, bad faith, or untrustworthiness.

(27) Acting negligently or incompetently in performing an act for which a person is required to hold a real estate license.

(28) Failing or refusing on demand to produce a document, book, or record in his or her possession concerning a real estate transaction conducted by him or her for inspection by the commission or its authorized personnel or representative.

(29) Failing within a reasonable time to provide information requested by the commission during an investigation or after a formal complaint has been filed.

(30) Failing without cause to surrender to the rightful owner, on demand, a document or instrument coming into his or her possession.

(31) If a qualifying broker or company, failing to keep in their files copies of all contracts, leases, listings, and other records pertinent to real estate transactions for a period of three years.

(b) If it appears that a person, firm, corporation, or any business entity has engaged, or is about to engage, in an act or practice constituting a violation of Article 1 or 2 of this chapter or any rule or order of the commission, the commission, through the Attorney General, may institute legal actions to enjoin the act or practice and to enforce compliance with Articles 1 and 2 of this chapter or any rule or order of the commission. To prevail in an action, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist or that substantial or irreparable damage would result from the continued violation.

(c)(1) Notwithstanding any other provisions of law, the commission may issue an order requiring any accused person, firm, corporation, or business entity to cease and desist from engaging in activities requiring a license under this chapter when the accused person, firm, corporation, or business entity is not licensed under this chapter. The order shall be entered by the executive director after a finding of probable cause by the commission staff. The order shall become final 15 days after its service upon the accused, unless the accused requests a hearing before the commission. Upon hearing the case and finding violations, the

commission may make the cease and desist order final and the commission may impose a fine for each violation in an amount consistent with the range of fines applicable to licensees, and in addition, may impose a fine in the amount of any gain or economic benefit that was derived from the violation, and in addition, may impose a fine in the amount of the commission's costs incurred. Any fines not paid as ordered shall be enforceable in any court with competent jurisdiction and proper venue.

(2) Notwithstanding any other provisions of law, the commission may decline to issue an order requiring any accused person, firm, corporation, or business entity to cease and desist from engaging in activities requiring a license under this chapter when the accused person, firm, corporation, or business entity is not licensed under this chapter. In this instance, the commission shall proceed to give appropriate notice of the violations and hold a hearing thereon. Upon hearing the case and finding violations, the commission may impose a fine for each violation in an amount consistent with the range of fines applicable to licensees, and in addition, may impose a fine in the amount of any gain or economic benefit that was derived from the violation, and in addition, may impose a fine in the amount of the commission's costs incurred. Any fine or fines not paid as ordered shall be enforceable in any court with competent jurisdiction and proper venue.

(d) The commission shall notify the licensee and qualifying broker in writing regarding the complaint.

(e) The commission shall notify the complainant, licensee, and qualifying broker in writing regarding the disposition of the complaint.

(Acts 1951, No. 422, p. 745, § 12; Acts 1963, No. 290, p. 734, § 1; Acts 1971, No. 2485, p. 3966, § 12; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1; Acts 1978, No. 654, p. 932; Acts 1983, No. 83-516, p. 781, § 1; Acts 1985, No. 85-750, § 1; Acts 1989, No. 89-284, p. 447, § 3; Acts 1992, No. 92-177, p. 305, § 3; Acts 1996, No. 96-791, p. 1471, § 1; Act 2003-298, p. 701, § 1; Act 2005-314, 1st Sp. Sess., p. 646, § 1; Act 2006-601, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1996 amendment, effective May 29, 1996, added subsections (c) and (d); and made nonsubstantive changes.

The 2003 amendment, effective June 18, 2003, in subsection (a), in subdivision (11) added the second and third sentences.

The 2005 amendment, effective November 1, 2005, in subsection (a) substituted "one hundred dollars (\$100) nor more than two thousand five hundred dollars (\$2,500)" for "twenty-five dollars (\$25) nor more than one thousand dollars (\$1,000)", substituted "acts set out in this section." for "acts:", and added the fifth and sixth sentences.

The 2006 amendment, effective July 1, 2006, redesignated subsections (c) and (d) as subsections (d) and (e), respectively; and added subsection (c).

Code Commissioner's Notes

In 2006, the Code Commissioner in the initial sentence of subdivisions (1) and (2) of subsection (c) deleted "any" preceding each occurrence of "business entity" as surplusage.

REFERENCES

ADMINISTRATIVE CODE

19 Ala. Admin. Code 790-X-3-.03 through 790-X-3-.06, 790-X-3-.09, Real Estate Board; Disciplinary Actions.

LIBRARY REFERENCES

American Digest System:

Brokers 3.

Corpus Juris Secundum:

C.J.S. Brokers §§ 14-24.

ANNOTATIONS

CASENOTES

Generally 1

Collection of fee from client 2

Sufficiency of evidence 3

1. Generally

Subdivision (a)(10) has no bearing on realtor's right to his commission, but instead addresses the authority of the real estate commission to discipline its licensed brokers. *Gentile v. Century 21, Ray Brannum Agency, Inc.*, 560 So.2d 760 (Ala.Civ.App.1990).

2. Collection of fee from client

Where salesperson signed over the commission check to sellers under the direction of the qualifying broker, and then asked for and received \$300.00 from the sellers without making an accounting to the qualifying broker, the Alabama Real Estate Commission finding of guilt was supported by substantial evidence. *Simon v. State of Ala. Real Estate Com'n*, 607 So.2d 1277 (Ala.Civ.App.1992).

The clear meaning of this section is that a real estate salesman may not collect his fee directly from his client. Each sale must be examined and authorized by a qualifying broker. *Church v. Conlon-Tanner Corp.*, 483 So.2d 383 (Ala.1985).

3. Sufficiency of evidence

Where salesman was late in returning the \$500 certified check to the potential purchasers when the property became unavailable because he was out of town for an extended period, Alabama Real Estate Commission's finding of guilt was not supported by substantial evidence and was arbitrary. *Simon v. State of Ala. Real Estate Com'n*, 607 So.2d 1277 (Ala.Civ.App.1992).

Cited in *Century 21 Preferred Properties, Inc. v. Alabama Real Estate Com.*, 401 So.2d 764 (Ala.1981), concurring op. at 611 So.2d 1021 (Ala.); *Ex parte Alabama Real Estate Com.*, 447 So.2d 740 (Ala.1984).

§ 34-27-37. Disciplinary action -- Procedure in action. [Historical Notes](#) [References](#)
[Annotations](#)

(a) An action against an accused shall begin by serving the accused either personally or by certified mail with a copy of the formal complaint against him or her. The accused shall be given at least 15 days' notice of the time, date, and place of hearing. If the commission refuses to license an applicant, notice of the refusal shall be given to the applicant, and he or she may, within 15 days after delivery of the notice, file a request for a hearing. The applicant or accused shall have an opportunity to be heard in person or by counsel, to offer testimony in his or her behalf, and to examine witnesses. Hearings shall be held in Montgomery County unless the commission decides to hold the hearing in the county in which the applicant or accused resides, maintains his or her principal place of business, or any other county in which the commission has scheduled a meeting. At hearings, all witnesses shall be sworn by a member of the commission, the executive director, the assistant executive director, or a hearing officer. The commission shall render a written order within 30 days from the final date of hearing. If the matter alleged in the complaint is the subject of an action pending in any court, the commission may withhold rendering or implementing its order pending disposition of the court action.

(b) The commission may issue subpoenas for the attendance of witnesses and the production of records and documents, either at the instance of the commission or the accused. The process issued by the commission shall extend to all parts of the state, and such process shall be served by a person designated by the commission or by mailing the process by certified mail. A subpoenaed witness who appears in a proceeding before the commission shall receive fees, mileage, and expense allowances as authorized by the commission. All fees, mileage, and expense payments shall be taxed against the party or parties subpoenaing the witness.

(c) If in a proceeding before the commission, a subpoenaed witness fails or refuses to attend or refuses to testify or fails or refuses to produce subpoenaed documents or records, his or her attendance and testimony or the production of the documents and records shall be enforced by any circuit court of this state, in the same manner as the attendance and testimony of witnesses is enforced in civil cases.

(d) An accused, applicant, or other party to a case heard by the commission who is aggrieved by a final decision, may file an application for rehearing specifying grounds for relief within 30 days of receiving notice of the decision.

An application for rehearing does not modify the effective date of the decision and is appropriate only if the final decision is:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the commission;
- (3) In violation of a commission rule;
- (4) Made upon unlawful procedure;
- (5) Affected by other error of law;
- (6) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (7) Unreasonable, arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.

Within 30 days from the filing of the application for rehearing the commission shall set a hearing date on the application, or shall enter an order without a hearing, or shall grant or deny the application. If the applicant is granted a rehearing, the commission will schedule a rehearing as soon as practicable. If the commission does not enter an order within 30 days from the filing

of the application for rehearing, the application shall be deemed to be denied.
(Acts 1951, No. 422, p. 745, § 13; Acts 1963, No. 290, p. 734, § 1; Acts 1971, No. 2485, p. 3966, § 13; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1; Acts 1978, No. 654, p. 932, § 1; Acts 1983, No. 83-516, p. 781, § 1; Acts 1985, No. 85-750, p. 1204, § 1; Acts 1988, No. 88-214, p. 315, § 3; Act 2005-314, 1st Sp. Sess., p. 646, § 1.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 2005 amendment, effective November 1, 2005, in subsection (a) rewrote the fifth sentence, and deleted the sixth and seventh sentences.

REFERENCES

ADMINISTRATIVE CODE

19 Ala. Admin. Code 790-X-3-.07, 790-X-3-.10, 790-X-3-.11, Real Estate Board; Disciplinary Actions.

LIBRARY REFERENCES

American Digest System:

Brokers 3.

Corpus Juris Secundum:

C.J.S. Brokers §§ 14-24.

ANNOTATIONS

CASENOTES

Generally 1

1. Generally

Alabama Real Estate Commission is quasi-judicial tribunal, in practice employing cross-examination. *Wellden v. Roberts*, 37 Ala.App. 1, 67 So.2d 69 (Ala.App.1951), affirmed 259 Ala. 517, 67 So.2d 75.

§ 34-27-38. Disciplinary action -- Appeals. [References](#) [Annotations](#)

(a) Findings of the commission are final unless within 30 days after the date of the commission's final order, the applicant or accused files a notice of appeal in the Circuit Court of Montgomery County, or of the county of his residence, if an Alabama resident; or, if a corporation registered in Alabama, in the circuit court of the county of registration or the county in which the corporation has its principal place of business in Alabama. A party appealing a decision shall post a \$200.00 appeal bond with the clerk of the circuit court. The circuit clerk shall notify the commission of the appeal after the clerk has approved the appellant's bond.

(b) An appeal does not act as supersedeas, but the decision of the commission may be stayed

by the court pending such appeal.

(c) The commission shall within 30 days of service of the notice of appeal, or within such additional time as the court may allow, file the record in the case with the circuit clerk. A complaint setting forth with particularity the issues raised on appeal shall be filed with the court and served on the commission by the appealing party within 30 days after the notice of appeal is filed. Thereafter the action shall be conducted in accordance with the Alabama Rules of Civil Procedure.

(d) The appeal shall be conducted by the court without a jury and shall be confined to the record. The commission's decision shall be taken as prima facie just and reasonable and the court shall not substitute its judgment for that of the commission as to the weight of the evidence on questions of fact. The court shall affirm or reverse, in part or in whole, or modify the commission decision or remand the case to the commission for further proceedings.

If the commission decision is affirmed in whole or in part, the cost of the appeal shall be taxed against the party taking the appeal. If the decision of the commission is not affirmed, the court shall tax the costs of appeal against the commission.

(Acts 1951, No. 422, p. 745, § 14; Acts 1963, No. 290, p. 734, § 1; Acts 1971, No. 2485, p. 3966, § 14; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1; Acts 1978, No. 654, p. 932, § 1; Acts 1983, No. 83-516, p. 781, § 1; Acts 1985, No. 85-750, p. 1204, § 1.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Brokers ☒ 3.

Corpus Juris Secundum:

C.J.S. Brokers §§ 14-24.

ANNOTATIONS

CASENOTES

Appellate review 2

Delay in posting bond 1

1. Delay in posting bond

Failure to file bond would have been ground for dismissal of real estate broker's appeal from finding of real estate commission, which revoked real estate license, but court erred in dismissing appeal as untimely on the ground that broker who had filed notice of appeal within 30 days, had not tendered his surety bond until the thirty-first day after being informed of commission's decision since posting bond is merely procedural; the appeal being perfected and jurisdiction of the circuit court attaching upon the filing of a notice of appeal. *Mallory v. Alabama Real Estate Commission*, 369 So.2d 23 (Ala.Civ.App.1979). Brokers ☒ 3

2. Appellate review

This section is silent regarding an appeal to the appellate courts of this state; nevertheless, §

12-22-2 provides that an appeal lies to the state supreme court [now appropriate appellate court] from final judgments of the circuit courts. *Adair v. Alabama Real Estate Commission*, 53 Ala.App. 621, 303 So.2d 119 (Ala.Civ.App.1974).

Cited in *Ex parte Darnell*, 262 Ala. 71, 76 So.2d 770 (1954); *Century 21 Preferred Properties, Inc. v. Alabama Real Estate Comm'n*, 401 So.2d 764 (Ala.,1981).

ARTICLE 3. VACATION TIME-SHARING PLANS.

REFERENCES

ADMINISTRATIVE CODE

19 Ala. Admin. Code 790-X-4-.01 et seq., Real Estate Commission; Timesharing Registration and Licensure.

19 Ala. Admin. Code 790-X-5-.01 et seq., Real Estate Commission; Enforcement of and Compliance with Timesharing Sales Act.

§ 34-27-50. Definitions.

meaning respectively ascribed to them by this section:

(1) Accommodations. Any hotel or motel room, condominium, or cooperative unit, cabin, lodge, apartment or any other private or commercial structure designed for occupancy by one or more individuals or any recreational vehicle campsite or campground.

(2) Business entity. Any individual, corporation, firm, association, joint venture, partnership, trust, estate, business trust, syndicate, fiduciary, and any other group or combination which engages in acts or practices in any trade or commerce.

(3) Contract. Any contract, promissory note, credit agreement, negotiable instrument, lease, use agreement, license, security or other muniment conferring on the purchaser the rights, benefits and obligations of a vacation time-sharing plan.

(4) Commission. The Alabama Real Estate Commission.

(5) Commissioner. A member of the Alabama Real Estate Commission.

(6) Facilities. Any structure, service or property whether improved or unimproved made available to the purchaser for recreational, social, family or personal use.

(7) Seller. Any owner of a vacation time-sharing plan or any business entity, including but not limited to an agent, dealer, distributor, franchiser, subsidiary, assignee, reseller, broker or any other representative thereof who, for a fee, commission or other valuable consideration, negotiates or attempts to negotiate the listing, sale, auction, purchase, exchange or lease of any real estate or the improvements thereon or collects rents or attempts to collect rents, or who advertises or holds himself out as engaged in any of the foregoing activities. Provided however, that the provisions of this article shall not be applicable to:

a. The resale of a vacation time-sharing unit week by the owner of such unit week, when the seller owns no more than four such unit weeks within the respective vacation time-sharing plan. Provided however, that the contract for such resale shall meet all the requirements of a contract for the initial sale of a vacation time-sharing interest, including the nonwaivable right of the purchaser to cancel the contract within the specified five-day

period.

b. Agencies and instrumentalities of the state or federal government nor to employees of any lender or public officials making appraisals for federal, state or local units of government, nor to anyone making appraisals through such employees for lending or governmental purposes; and provided further, that the sales licensure provisions of this article shall not be applicable to the sale or leasing of real estate by anyone who owns a fee simple interest of at least 10 percent therein, or to the attorney-at-law of such owner acting within the scope of his duties as an attorney-at-law. Ownership of stock in a corporation is not ownership of an interest in real estate owned by the corporation and does not exempt such stockholder from any provision of this article unless the stockholder owns or controls at least 10 percent of the stock of the corporation. This provision exempts owners from only the sales licensure requirements of this article. All other requirements of sellers under this article shall apply to owners of vacation time-sharing plans.

(8) Vacation time-sharing ownership plan. Any arrangement, plan, or similar device, whether by tenancy in common, sale, deed or by other means, which is subject to supplemental agreement or contract for use of the time-sharing unit, whereby the purchaser receives an undivided fee simple ownership interest in and the right to use accommodations or facilities, or both, for a specific period of time during any given year, but not necessarily for consecutive years, which extends for a period of more than one year.

(9) Vacation time-sharing lease plan. Any arrangement, plan, or similar device, whether by membership agreement, lease, rental agreement, license, use agreement, security or other means, whereby the purchaser receives a right to use accommodations or facilities, or both, but does not receive an undivided fee simple interest in the property, for a specific period of time during any given year, but not necessarily for consecutive years, and which extends for a period of more than one year.

Such lease plans shall not include an arrangement or agreement whereby a purchaser in exchange for an advance fee and yearly dues is entitled to select from a designated list of facilities located in more than one state accommodations, of companies which operate in at least nine states in the United States through franchises or ownership, for a specified time period and at reduced rates and under which no interest in real property is transferred.

(10) Vacation time-sharing plan. Either a vacation time-sharing ownership plan or a vacation time-sharing lease plan as defined herein.

(11) Time-sharing unit. The actual accommodations and related facilities which are the subject of the vacation time-sharing ownership plan or lease plan.

(12) Substantially complete. All structural components and mechanical systems of all buildings containing or comprising any time-sharing unit, facilities, or accommodations are finished in accordance with the plans or specifications of the project as evidenced by a recorded certificate of completion executed by an independent registered surveyor, architect or engineer.

(13) Unit week or interval. A number of consecutive days, normally seven consecutive days in duration, which may reasonably be assigned to purchasers of vacation time-sharing plans by the sellers.

(14) Receivable. Any note, contract, promise or any other agreement to pay a fixed or determinable amount of money which, for the purposes of this article, shall not be in arrears for more than 90 days.

(15) Escrow agent. A federally insured financial institution doing business in this state or a bonded trust agent bonded in at least the amount of the trust; provided, however, that nothing contained in this article shall operate to prevent investment of funds escrowed pursuant to this article by the bank, trust company or bonded agent and to pay all interest and dividends to the seller of vacation time-sharing plans.

(16) Escrow account. Any funds held or maintained by an escrow agent.

(17) Vacation time-sharing sales license. A license issued by the commission authorizing individuals to act as sellers of vacation time-sharing plans.

(18) Licensee. A person having a vacation time-sharing sales license.

(19) Exchange company. Any person or business entity owning and/or operating an exchange program.

(20) Exchange program. Any arrangement allowing owners to exchange occupancy rights with persons owning other timeshares; provided, however, that an exchange program shall not exist if all of the occupancy rights which may be exchanged are in the same time-share property.

(21) Managing agent. Any person engaged by the owners association to manage the time-share plan and the time-share property.

(22) Qualifying broker. A person who is licensed by the commission as a real estate broker as well as a seller of vacation time-sharing plans and who serves in a supervisory capacity to all other licensees acting in the name of the vacation time-sharing plan which the qualifying broker represents.

(23) Time-sharing project. All the real property contained as part of a vacation time-sharing plan.

(Acts 1983, No. 83-670, p. 1035, § 1; Acts 1984, No. 84-282, p. 472, § 1; Acts 1985, No. 85-750, p. 1204, § 1.)

§ 34-27-51. Acts constituting violation of article -- Sell, etc.; without license; failure to provide certain documents at time of registration; failure to follow rules of advertising.

[References](#) [Annotations](#)

It shall be a violation of this article for any seller of vacation time-sharing plans to:

(1) Sell, lease, encumber or convey in any manner or to solicit or advertise such transactions unless the seller has been duly licensed under the provisions of Section 34-27-66 and unless the vacation time-sharing plan and the units thereby affected have first been registered with the commission. Provided, however, that the registration requirements of this article shall not apply to nor restrict the listing and resale of any vacation time-sharing plan when:

a. The vacation time-sharing plan to be resold is within an existing time-sharing facility currently registered with the commission pursuant to the requirements of this article; and

b. The vacation time-sharing plan to be resold is subject to the identical rules, regulations, conditions or limitations on the use of the accommodations or facilities which affect all other vacation time-sharing plans within that time-sharing facility.

(2) Fail to provide, at the time of registration, to the commission the following materials, or fail to provide any amendments or changes therein made while sales continue:

a. A copy of the contract by which the rights and obligations of the parties are

established.

b. Copies of promotional brochures, pamphlets, advertisements or other material disseminated to the public in connection with the sale of the vacation time-sharing plan and verbatim scripts of all radio and television advertising in connection therewith.

c. A statement of the name and type of business entity through which the business of selling vacation time-sharing plans is carried out, including a list of the names and addresses of all of its directors, principal officers, and/or partners, as well as the names and addresses of any sales personnel soliciting in or from the State of Alabama, and the name and address of the business agent for service of process within the State of Alabama.

d. Copies of all rules, regulations, conditions or limitations on use of the accommodations or facilities available pursuant to the vacation time-sharing plan.

e. Copies of all liens, mortgages or other encumbrances on the accommodations or facilities which could affect the rights of the purchaser or his assignee, together with the location, date and filing books and page number where such documents are recorded.

f. A synopsis of any sales presentation made or to be made by the seller to the purchaser over the telephone or other electronic device.

g. A projected budget of all recurring expenses which may become the responsibility of time-sharing purchasers.

h. A copy of the public offering statement to be provided to each prospective purchaser.

i. Evidence that the time-sharing plan owner or his agent shall furnish a surety bond payable to the State of Alabama in the amount of \$100,000.00 with a surety company authorized to do business in Alabama, which bond shall provide that the obligor therein shall pay up to \$100,000.00 the aggregate sum of all judgments which may be recovered against the vacation time-sharing plan owner or seller for any actual loss or damage arising against such vacation time-sharing plan owner or seller from the activities of the time-sharing plan owner or seller, or their agents or representatives, related to the time-sharing plan. Such bond must remain in effect for as long as the time-sharing plan shall be registered. In the event such bond is revoked by the surety company, the time-sharing owner shall have 10 days in which to obtain a new bond and file such with the commission. The lack of a bond shall be grounds for the suspension of the registration of the time-sharing plan.

Upon receipt of all items required by this section, the commission shall determine the sufficiency thereof and upon satisfactory compliance with this article, shall issue its order approving their use. The vacation time-sharing plan shall then be deemed registered. Promotional or advertising material developed after the initial registration of a time-sharing plan may be used without prior approval of the commission provided that such material is in compliance with this article and further provided that it is submitted to the commission within 10 days after its initial public use.

(3) Fail to include in all advertising of any vacation time-sharing plan a statement which clearly states that the seller is offering a time-sharing interest.

(4) Fail to include in all advertising of any vacation time-sharing plan which offers a time-sharing interest of less than fee simple a statement which clearly states that the interest being offered is less than a fee simple ownership interest.

(5) Effective October 1, 1985, fail to provide each prospective purchaser a public offering

statement in such form and under such terms as shall be required by commission rules and regulations.

(Acts 1983, No. 83-670, p. 1035, § 2; Acts 1984, No. 84-282, p. 472, § 1; Acts 1985, No. 85-750, p. 1204, § 1.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Brokers  4, 5.

Corpus Juris Secundum:

C.J.S. Brokers §§ 6-13.

ANNOTATIONS

CASENOTES

Cited in Knutilla v. Auto-Owners Ins. Co., 578 So.2d 1359 (Ala.Civ.App.1991).

§ 34-27-52. Acts constituting violation of article -- Failure to keep certain items among business records. [References](#)

It shall be a violation of this article for any owner or business entity offering vacation time-sharing plans for sale to the public to fail to keep among its business records the following:

(1) A copy of each item required to be submitted to the commission under Section 34-27-51.

(2) A copy of the contract from each sale of the vacation time-sharing plan, which contract shall be retained for a period of at least three years after parties to the vacation time-sharing plan have completely performed all of their obligations thereunder.

(3) A list of all employees and independent contractors involved in the development, sale, or advertising of the vacation time-sharing plan or plans, including their last known mailing addresses, which list shall include all current employees and all previous employees whose employment has been terminated within the preceding 36 months.

(Acts 1983, No. 83-670, p. 1035, § 3; Acts 1985, No. 85-750, p. 1204, § 1.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Brokers  4, 5.

Corpus Juris Secundum:

C.J.S. Brokers §§ 6-13.

§ 34-27-53. Acts constituting violation of article -- Failure to utilize, etc., fully completed

copy of contract. [References](#)

It shall be a violation of this article for the seller of a vacation time-sharing plan to fail to utilize and furnish the buyer with a fully completed copy of a contract pertaining to such sale at the time of its execution which shall include:

- (1) The actual date the contract is signed by all parties.
- (2) The name and address of the seller.
- (3) In immediate proximity to the space reserved in the contract for the signature of the buyer and in no smaller type than contained in the body of the contract:
 - a. In the case of a vacation time-sharing lease plan, the following statement:
"You may cancel this contract without penalty or obligation within five days, not including Sunday if that is the fifth day, from the above date. You may also cancel this contract at any time in case the accommodations or facilities are no longer available as provided in the contract. If you decide to cancel, you must notify the seller in writing of your intent to cancel by sending notice to (name of seller) by certified mail, return receipt requested at (seller's address)."
 - b. In the case of a vacation time-sharing ownership plan, the following statement:
"You may cancel this contract without penalty or obligation within five days, not including Sunday if that is the fifth day, from the above date, by notifying the seller in writing of your intent to cancel, sending his notice thereof by certified mail, return receipt requested."
 - c. It shall be a violation of this article for the seller of a vacation time-sharing ownership plan to fail to furnish the buyer with an inventory of all furniture, fixtures and appliances which will be located in the accommodation during the time period purchased under a vacation time-sharing ownership plan or at closing.

(Acts 1983, No. 83-670, p. 1035, § 4.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Brokers  4, 5.

Corpus Juris Secundum:

C.J.S. Brokers §§ 6-13.

§ 34-27-54. Acts constituting violation of article -- Failure, etc., to honor buyer's request to cancel contract. [References](#)

It shall be a violation of this article for the seller of vacation time-sharing plans, or his assignees, to fail or refuse to honor a buyer's request to cancel a contract as provided by Section 34-27-53 if such request is made; provided however, nothing contained in this section shall operate to deny the seller the option to repair, replace or reconstruct within a reasonable time the accommodations or facilities if destroyed or damaged; provided that such repair, replacement or reconstruction shall bring such accommodations or facilities back to a state reasonably the same as before the damage or destruction.

(Acts 1983, No. 83-670, p. 1035, § 5.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Brokers  4, 5.

Corpus Juris Secundum:

C.J.S. Brokers §§ 6-13.

§ 34-27-55. Acts constituting violation of article -- Failure to refund all payments; failure to place all funds in escrow account. [References](#)

It shall be a violation of this article for a seller of vacation time-sharing plans to:

(1) Fail to refund any and all payments made by the buyer under the contract and return any negotiable instrument, other than checks, executed by the buyer in connection with the contract or services within 20 days after receipt of notice of cancellation made pursuant to Section 34-27-53, if the buyer has not received any benefits pursuant to the contract.

(2) If the buyer has received any benefits pursuant to the contract, fail to refund within 30 days after receipt of notification of cancellation made pursuant to Section 34-27-53 or Section 34-27-54 any and all payments made by the buyer to the seller which exceed a pro rata portion of the total price, taking into consideration the cost of use of the time-share facilities at an average rental rate per unit for all time-share units, representing the proportion of any contract benefits actually received by the buyer during the time preceding cancellation.

(3) Fail to place in an escrow account 100 percent of the funds received from the purchasers of such plans, where the seller of the time-sharing plan transfers an interest herein to the purchaser, which escrow account shall provide that:

a. Its purpose is to protect the buyer's right to refund during the five day right to cancellation period provided in Section 34-27-53 or Section 34-27-54, and

b. Funds may be withdrawn by the seller upon transfer to the buyer after expiration of the respective cancellation period provided in such Sections 34-27-53 and 34-27-54.

(Acts 1983, No. 83-670, p. 1035, § 6; Acts 1984, No. 84-259, p. 431, § 1.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Brokers  4, 5.

Corpus Juris Secundum:

C.J.S. Brokers §§ 6-13.

§ 34-27-56. Acts constituting violation of article -- Misrepresentation. [References](#)

It shall be a violation of this article for any seller of vacation time-sharing plans, or his assignees, to misrepresent in any manner the buyer's right to cancel provided by this article.

(Acts 1983, No. 83-670, p. 1035, § 7.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Brokers  4, 5.

Corpus Juris Secundum:

C.J.S. Brokers §§ 6-13.

§ 34-27-57. Acts constituting violation of article -- Sell, etc., interest in plan to third person that substantially affects rights of other owners. [References](#)

(a) It shall be a violation of this article for any seller of vacation time-sharing plans to sell, lease, assign or otherwise transfer the seller's interest in the vacation time-sharing plan or the accommodations or facilities to a third party when such a sale, lease, assignment or other transfer substantially affects the rights of other owners or lessees of the time-share units, unless:

(1) The third party agrees in writing to:

a. Fully honor the rights of purchasers of the vacation time-sharing plan to occupy and use the accommodations or facilities; and

b. Fully honor rights of purchasers of the vacation time-sharing plan to cancel their contracts and receive an appropriate refund as provided in this article; and

c. Comply with the provisions of this article for as long as the third party continues to sell the vacation time-sharing plan, or for as long as purchasers of the vacation time-sharing plan are entitled to occupy the accommodations or use the facilities, whichever is longer in time; and

(2) The commission receives prior written notice of the intent to transfer the seller's interest; and

(3) Written notice is given to each purchaser of a vacation time-sharing plan affected thereby, by certified mail within 30 days of the transfer.

(b) The commission shall reserve the right to demand such additional information regarding the transfer as is reasonably necessary to determine to what extent the rights of other owners of units or unit weeks within the subject time-sharing plan shall be affected and to determine whether the registration of the plan should continue, should be amended, or should be suspended or revoked.


(c) The provisions of this section shall not be construed to apply to the sale of a single unit or to prevent the seller's right to sell, discount, or hypothecate for value receivables in favor of any bank, mortgage company, or other lending institution and such transactions shall be exempt from the requirements of the section.

(Acts 1983, No. 83-670, p. 1035, § 8; Acts 1985, No. 85-750, p. 1204, § 1.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Brokers  4, 5.

Corpus Juris Secundum:

§ 34-27-58. Acts constituting violation of article -- Failure to place 50 percent of cash, etc., received in escrow; failure to provide liability insurance, etc. [References](#)

(a) It shall be a violation of this article for a seller of vacation time-sharing lease plans to fail to:

(1) Place in escrow 50 percent of the cash and receivables received from the purchasers of such plans, such receivables to be assessed at net principal value.

a. The purpose of such escrow account is to protect the purchaser's right to a refund if at any time the accommodations and facilities are no longer available as provided in the contract; provided however, nothing contained in this section shall operate to deny the seller the option to repair, replace or reconstruct, within a reasonable time, the accommodations or facilities, if destroyed or damaged.

b. The purchaser shall be entitled to a refund from the escrow account upon the conditions described above in an amount which represents the buyer's pro rata share of the moneys therein.

c. Funds may be withdrawn by the seller from the escrow account in the ratio of the amount of remaining time available for use by the purchaser of the vacation time-sharing lease plan in relation to the total time available to the purchaser at the time of purchase.

d. The escrow agent shall release or dispense funds from the escrow account to the seller of a vacation time-sharing lease plan only upon receipt of a sworn statement from the seller that the accommodations and facilities have been available for use by the purchaser according to the terms of the purchaser's contract.

(2) In lieu of the escrow account provided in subdivision (1), a seller of vacation time-sharing lease plans may:

a. Assign to an escrow agent receivables, the income from which shall be adequate to pay all liens or encumbrances secured by the time-sharing facilities or accommodations.

Should net income from such escrowed receivables be insufficient to pay all liens or encumbrances as aforesaid, the escrow agent shall so notify the seller in writing, and the seller shall within 15 days after notice pay unto the escrow agent the amount of such deficit.

b. Sell, hypothecate or discount receivables, the proceeds from which shall be deposited with an escrow agent and administered in the manner prescribed by paragraph (2) a of subsection (a) of this section.

(3) Provide the purchaser with liability and property insurance at the seller's expense for the accommodations and facilities to be used by the vacation time-sharing lease plan purchaser in an amount equal to the replacement cost of such accommodations and facilities, or the maximum amount of insurance available on the accommodations and facilities, according to generally accepted underwriting principles for similar properties in the same area, and to deposit with an escrow agent, annually, sufficient funds for the payment of all insurance premiums, taxes, and assessments levied against the accommodations and facilities; or, in the alternative, provide for the assessment against the purchaser by an association or duly appointed agent for the owners of such escrow funds for all costs including insurance premiums, taxes, assessments, maintenance repairs and management fees.

(4) Provide the purchaser with an instrument, in recordable form, which provides notice to all subsequent creditors of the seller of the existence of the vacation time-sharing plan rights of the purchaser. Such instrument shall be provided to the purchaser by the seller at the time of signing of the contract. When recorded, such instrument shall serve to protect the purchaser's interest in the seller's accommodations from any claims by subsequent creditors of the seller.

(5) Provide a document which explains the content, purpose and protection afforded to the purchaser by the documents described in subdivision (4) along with the procedure necessary to follow in order to secure to the purchaser the rights and protections which such documents provide.

(b) It shall be a violation of this article for a seller of vacation time-sharing ownership plans to fail to:

(1) Deposit with an escrow agent no less than 50 percent of the cash and receivables received from the purchasers of such plans, such receivables to be assessed at net principal value.

a. The purpose of the escrow account required hereunder is to protect the purchaser's ownership interest in the accommodations or facilities and to provide funds from which periodic payments can be made to retire any outstanding indebtedness on the time-sharing facilities or accommodations.

b. The escrow agent shall release or dispense to the seller of the vacation time-sharing ownership plan funds from the escrow account, at least quarterly but not more frequently than monthly, in an amount which shall not exceed 100 percent of the sum of all accrued indebtedness secured by the time-sharing accommodations or facilities which funds shall be used by the seller solely for the retirement of that indebtedness.

c. Prior to the release or dispensing of such escrow funds, the seller shall furnish the escrow agent with a sworn statement which reveals by category the total amount of all liens or indebtedness secured by the time-sharing accommodations or facilities, the amount of indebtedness anticipated during the next succeeding reporting period and the amount of any deficit or surplus accruing from the preceding reporting period.

(2) In lieu of the escrow account provided in subdivision (1) of this subsection (b), a seller of vacation time-sharing ownership plans may alternatively:

a. Assign to an escrow agent receivables, the income from which shall be adequate to pay all liens or encumbrances secured by the time-sharing facilities and accommodations.

Should net income from such escrowed receivables be insufficient to pay all recurring debts as aforesaid, the escrow agent shall so notify the seller in writing and the seller shall within 15 days after notice pay into the escrow account the amount of such deficit.

b. Sell, hypothecate or discount receivables, the proceeds from which shall be deposited with an escrow agent and administered in the manner prescribed by paragraph (2)a of this subsection (b).

(3) Provide the purchaser with liability and casualty insurance at the seller's expense for the accommodations and facilities to be used by the vacation time-sharing lease plan purchaser in an amount equal to the replacement cost of such accommodations and facilities, or the maximum amount of insurance available on the accommodations and facilities, according to generally accepted underwriting principles for similar properties in the same area, and to deposit with an escrow agent, annually, sufficient funds for the payment of all insurance premiums, taxes and assessments levied against the accommodations and facilities.

In the alternative, provide for the assessment against the purchaser by an association or duly appointed agent for the owners of such escrow funds for all costs including insurance premiums, taxes, assessments, maintenance, repairs and management fees.

(c) Any escrow account kept pursuant to this section may be discontinued when all liens or encumbrances on the subject of time-sharing accommodations and facilities have been fully discharged. When the value of the escrow account equals the sum of all mortgages, liens and indebtedness on the project secured by project property, the seller may reduce his payments into the escrow account to monthly amounts which will maintain the value of the escrow account at an amount equal to the total obligation represented by all mortgages, liens and indebtedness.

(d) The commission may at its discretion waive the requirement for a time-share plan to maintain an escrow account pursuant to this section upon proof satisfactory to the commission that the unit weeks being sold or leased through the respective time-sharing plan are being released from all liens or encumbrances at, or prior to, the time of the sale or lease.

(Acts 1983, No. 83-670, p. 1035, § 9; Acts 1985, No. 85-750, p. 1204, § 1.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Brokers  4, 5.

Corpus Juris Secundum:

C.J.S. Brokers §§ 6-13.

§ 34-27-59. Acts constituting violation of article -- Failure to disclose total financial obligation, etc., in contract. [References](#)

It shall be a violation of this section for any seller of vacation time-sharing plans to fail to fully disclose in the contract in boldface type of a size no smaller than any other type used in the body of the contract to purchaser:

(1) The total financial obligation of the purchaser, which shall include the initial purchase price and any additional charges to which the purchaser may be subject.

(2) Any individual or business entity which has or may have the right to alter, amend or add to charges to which the purchaser may be subject and the terms and conditions under which such charges may be imposed.

(3) The nature and duration of each agreement between the business offering the vacation time-sharing plans for sale and the individual or business entity managing the accommodations or other facilities.

(4) In immediate proximity to the space reserved in the contract for the signature of the buyer and in boldface type of the same size as required by subdivision (3) of Section 34-27-53 a statement as follows:

"No purchaser should rely upon representations other than those included in the contract."

However, inclusion of this statement shall not impair the purchaser's right to bring any legal action based upon any cause of action arising from oral statements.

(5) The date of availability of each amenity of the offered accommodations and facilities

when they are not completed at the time of sale of such plan.

(6) The specific term of the contract.

(Acts 1983, No. 83-670, p. 1035, § 10.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Brokers  4, 5.

Corpus Juris Secundum:

C.J.S. Brokers §§ 6-13.

§ 34-27-60. Acts constituting violation of article -- Misrepresentation; waiver of rights of purchasers; sale, etc., without license; bad checks. [References](#)

It shall be a violation of this article for any seller of vacation time-sharing plans to:

(1) Use any promotional device, including but not limited to sweepstakes, lodging certificates, gift awards, premiums, or discounts, without fully disclosing that such promotional devices are being used for the purpose of soliciting the sale of vacation time-sharing plans and without fully disclosing the fair market value of each award or prize offered and the approximate odds of receiving each award or prize offered.

(2) Use any promotional device as set forth above to obtain the names and addresses of prospective purchasers without fully and prominently disclosing that names and addresses so acquired will be used for the purpose of soliciting the sale of the vacation time-sharing plans.

(3) Misrepresent the amount of time or period of time the accommodations and facilities will be available to any purchaser.

(4) Misrepresent or deceptively represent the location of the offered accommodations and facilities.

(5) Misrepresent the size, nature, extent, qualities or characteristics of the offered accommodations and facilities.

(6) Misrepresent the nature or extent of any services incident to the accommodations and facilities.

(7) Make any misleading or deceptive representations with respect to the contents of the contract or the buyer's rights, privileges or benefits thereunder.

(8) Fail to honor and comply with all provisions of the contract with the purchaser.

(9) Misrepresent the conditions under which a customer may exchange his rights to an accommodation in one location for rights to an accommodation in another location.

(10) Include in any contract any provision purporting to waive any right or benefit provided for purchasers under this article, or to seek or solicit such a waiver.

(11) Do any other act which constitutes fraud, misrepresentation or failure to make a disclosure of a material fact.

(12) Perform any act for which a vacation time-sharing license is required unless the seller is either exempted from the license requirement, a duly authorized and licensed qualifying broker, or a duly licensed seller acting under the sponsorship and supervision of a qualifying broker.

(13) Allow an unlicensed person who is engaged or employed by him or who is under his control or supervision to perform any act for which a time-sharing sales license is required.

(14) Present to the Alabama Real Estate Commission, as payment for a fee or fine, a check that is returned due to there being insufficient funds in the account upon which it was drawn or due to such account being closed or not in existence.

(Acts 1983, No. 83-670, p. 1035, § 11; Acts 1984, No. 84-282, p. 472, § 1; Acts 1985, No. 85-750, p. 1204, § 1.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Brokers  4, 5.

Corpus Juris Secundum:

C.J.S. Brokers §§ 6-13.

§ 34-27-61. Hearing; refusal, suspension or revocation of license; willful violation defined; escrow deficiency. [References](#)

The commission may upon its own motion, or upon the verified complaint in writing of any person, hold a hearing regarding an alleged violation by any person or business entity of this article. Any person found guilty of having violated any provision of this article or any rule, regulation or order of the commission shall be subject to the refusal of a license, if not licensed; or, if licensed, to the suspension or revocation of such license and/or a monetary penalty of not less than \$25.00 nor more than \$1,000.00.

Such hearing shall be held in a manner prescribed by the Alabama Real Estate License Law and the rules and regulations of the Alabama Real Estate Commission. The reinstatement of a license suspended or revoked as a result of a violation under this article may be made conditional upon the fulfillment of such reasonable conditions as are imposed by the commission.

The penalties and procedures outlined in this section shall not be construed to supersede or conflict with penalties and procedures outlined in other sections of this article.

Provided, that a deficiency in an escrow account required by this article, which results solely from the cancellation or worthlessness of receivables previously placed in escrow, shall not be considered a violation of this article. In the event of an escrow deficiency, a lender who has advanced funds to a project shall have no liability to contribute funds to the escrow to cure the deficiency, and the lender's lien on the property shall not be affected by the deficiency. (Acts 1983, No. 83-670, p. 1035, § 12; Acts 1985, No. 85-750, p. 1204, § 1.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Brokers  3.

Corpus Juris Secundum:

C.J.S. Brokers §§ 14-24.

§ 34-27-62. Enforcement and implementation of article; acts constituting misdemeanors; voidability of sales of unregistered plans, etc. [References](#)

(a) The Alabama Real Estate Commission shall be responsible for the enforcement and implementation of this article, and the Attorney General of the State of Alabama, or the district attorney of any county of the State of Alabama upon request by the commission, shall assist the commission in the enforcement of this article and the prosecution of violations hereunder. The provisions of this article shall not be construed to limit in any manner the right of any party to bring a private action to enforce the provisions of this article. In addition to the administrative enforcement of this article by the commission, the following shall be Class A misdemeanors triable in the courts of Alabama:

(1) It shall be a Class A misdemeanor for any person, natural or legal, while within the borders of the State of Alabama, to participate in the sale or attempted sale of any time-share plan unless licensed to do so by the commission or exempted from such licensure by the laws of the State of Alabama or the United States, regardless of whether the vacation time-sharing plan is itself located within the State of Alabama.

(2) It shall be a Class A misdemeanor for any person, natural or legal, to or attempt to, sell, lease or otherwise market any interest in any vacation time-sharing plan not registered with the commission as a vacation time-sharing plan or exempted from such registration by the laws of the State of Alabama or the United States, regardless of whether the vacation time-sharing plan is itself located within the State of Alabama.

(b) Any time-sharing sale made in Alabama between a time-share purchaser and a seller for the purchase or lease of a time-share week or weeks in a vacation time-share plan which is not registered with the commission, or whose registration is under suspension, or which is under an order from the commission to cease and desist from sales, shall be voidable by the purchaser. An action to void such a transaction must be brought by the purchaser within three years of the date of the making of the lease or sales agreement. In any such action, the prevailing party may be awarded reasonable attorney fees as determined by the court.

(Acts 1983, No. 83-670, p. 1035, § 13; Acts 1985, No. 85-750, p. 1204, § 1.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Brokers  5.

Corpus Juris Secundum:

C.J.S. Brokers § 13.

§ 34-27-63. Filing of plan relating to units not substantially completed requires filing of additional documents. [References](#)

If a seller files with the commission any vacation time-sharing plan or any amendment thereto which describes or concerns time-sharing units, accommodations or facilities not substantially completed, the seller shall file with the commission the following:

(1) A notarized statement showing all costs involved in completing each phase of the

project.

(2) A notarized statement of the time of completion of construction of each phase of the project.

(3) Satisfactory evidence of sufficient funds to cover all costs to complete the project.

(4) A copy of the executed construction contract and any other contracts for the completion of the project.

(5) A 100 percent payment performance bond payable to the State of Alabama from a surety company authorized to do business in Alabama, covering the entire cost of construction necessary to complete the project.

(6) If purchasers' funds are to be used in the construction of the project, an executed copy of the escrow agreement with an escrow company or financial institution authorized to do business with the state, which provides that:

a. Disbursements of purchasers' funds may be made from time to time to pay for construction of the project; architectural, engineering, finance, and legal fees; and other costs for the completion of the project in proportion to the value of the work completed by the contractor as certified by a registered surveyor, architect, or engineer on bills submitted and approved by the lender of construction funds or the escrow agent;

b. Disbursements of the balance of purchasers' funds remaining after completion of the project may be made only after either the escrow agent or lender receives satisfactory evidence that the period for filing mechanics' and materialmen's liens has expired, or the right to claim those liens has been waived or other adequate provision has been made for satisfaction of any claimed mechanics' or materialmen's lien; and

c. Any other restrictions relative to the retention and disbursement of purchasers' funds required under the rules of the commission have been met; and

d. Any other materials or information required under the rules of the commission have been provided.

(7) The commission shall not register or issue any order approving any vacation time-sharing plan unless the commission determines, on the basis of materials submitted by the developer, that the time-sharing units, accommodations, or facilities or any additions thereto will be completed.

(Acts 1983, No. 83-670, p. 1035, § 14; Acts 1985, No. 85-750, p. 1204, § 1.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Estates in Property 1.

Corpus Juris Secundum:

C.J.S. Estates §§ 2-5, 8, 15-21, 116-128, 137, 243.

§ 34-27-64. Registration fees; assessment of costs of investigating violation of article.

[Historical Notes](#) [References](#)

(a) For the registration of all vacation time-sharing plans and the accommodations and facilities affected thereby which are located within the state, there shall be paid to the

commission the initial sum of seven hundred fifty dollars (\$750), together with an annual renewal fee of seven hundred fifty dollars (\$750). In addition to submitting an annual renewal fee, each time-sharing plan must submit an audited annual financial statement of the entity or person in whose name the plan is registered done by a certified public accountant and such other materials as the commission shall require for an annual registration renewal. For amendments or changes to each sales promotion including brochures, pamphlets, advertisements, or other materials disseminated to the public required pursuant to subdivision (2) of Section 34-27-51, there shall be paid a fee of twenty dollars (\$20) at the time of submission to the commission for approval.

(b) For the registration of all vacation time-sharing plans and the accommodations and facilities affected thereby which are located outside the state, there shall be paid to the commission the initial sum of seven hundred fifty dollars (\$750), together with an annual renewal fee of seven hundred fifty dollars (\$750). All books, files, accounts and other documents pertaining to the advertisement and sale of vacation time-sharing plans located outside the state shall be subject to examination by the commission and the business entity whose documentation is being examined shall pay a fee of five hundred dollars (\$500) plus the actual expenses, including the cost of transportation, of the examiner representing the commission while he is absent from this office for purposes of conducting the examination. For amendments or changes to each sales promotion including brochures, pamphlets, advertisements, or other materials disseminated to the public required pursuant to subdivision (2) of Section 34-27-51, there shall be paid a fee of twenty dollars (\$20) at the time of submission to the commission for approval.

(c) If the commission determines that the registration or operation of any vacation time-sharing plan violates the provisions of this article in such manner as indicates bad faith or dishonesty, the commission, after notice and hearing, may assess all reasonable costs of the investigation and prosecution of such violations.

(Acts 1983, No. 83-670, p. 1035, § 15; Acts 1985, No. 85-750, p. 1204, § 1; Act 2001-310, p. 391, § 1.)

HISTORICAL NOTES

HISTORY


Amendment notes:

The 2001 amendment, effective April 25, 2001, in subsection (a) substituted "seven hundred fifty dollars (\$750)" for "\$200", deleted the second sentence, and added the final sentence; and added the final sentence; and in subsection (b) substituted "seven hundred fifty dollars (\$750)" for "\$500.00", substituted "seven hundred fifty dollars (\$750)" for "\$200.00", deleted the second sentence, substituted "five hundred dollars (\$500)" for "\$500.00", and added the final sentence.

REFERENCES

LIBRARY REFERENCES

American Digest System:

Estates in Property  1.

Corpus Juris Secundum:

C.J.S. Estates §§ 2-5, 8, 15-21, 116-128, 137, 243.

§ 34-27-65. Proceeds from sale, etc., of lease plan exempt from Transient Occupancy Tax.

[References](#)

The proceeds from the sale or resale of any vacation time-sharing lease plan shall be exempt from the Transient Occupancy Tax imposed by Section 40-26-1. (Acts 1983, No. 83-670, p. 1035, § 16.)


REFERENCES

ADMINISTRATIVE CODE

20A Ala. Admin. Code 810-6-5-.12, 810-6-5-.13, Department of Revenue; Use Tax Law, Lodgings Tax, etc.

LIBRARY REFERENCES

American Digest System:

Innkeepers 4.

Corpus Juris Secundum:

C.J.S. Inn, Hotels and Eating Places §§ 8-9.

§ 34-27-66. Examination required; application; qualifications; fee; forfeiture; license generally; issuance and renewal of license; notice of change of address. [References](#)

(a) Any person desiring to act as a seller of vacation time-sharing plans shall file with the commission a written application upon such form as the commission shall designate and shall pass to the satisfaction of the commission the examination hereinafter prescribed.

(b) Prerequisites for taking the vacation time-sharing sales examination are as follows:

(1) Evidence satisfactory to the commission that the applicant bears a good reputation for honesty and truthfulness.

(2) The applicant should not have been convicted of any criminal offense involving moral turpitude or of any felony in this or any other state.

(3) The applicant must be at least 19 years of age.

(4) The applicant must be a citizen of the United States or shall possess a certification of lawful permanent residence issued by the United States government.

(c) The commission shall prepare and conduct an examination on the fundamentals of this article and related topics and shall schedule such examination at least quarterly. No applicant shall be entitled to examination unless all prerequisites enumerated above have been met as determined by the commission. The minimum passing grade shall be 70 percent.

(d) Every applicant shall pay the sum of \$75.00 for each examination taken. Should an applicant be scheduled and issued a permit for an examination and fail to appear, the entire amount of the examination fee will be forfeited. Liability for forfeiture occurs at the time the examination permit is issued. The applicant shall be allowed up to 60 days after notice of passing the examination to either be designated as a qualifying broker or to secure a qualifying broker under whom to be licensed. In the alternative, the applicant may place his license on

inactive status with the commission within the allotted 60-day period. Every applicant shall also pay a license fee of \$50.00 upon successful completion of the examination, provided he submits the license fee along with appropriate documentation to the commission within the allotted 60-day period. The 60-day period shall begin on the date which the results of the applicant's examination are made available to the applicant. The results shall be mailed from the commission office, and the applicant will be considered to have received such notification three days from the date of mailing. Should an applicant not become licensed within 60 days after receiving notification of his having passed the examination, he shall be required to again meet the requirements of an original applicant before becoming licensed, including the taking and passing of the examination. The commission shall be entitled to contract with any outside source to prepare and conduct vacation time-sharing sales examinations in its behalf and to pay for the reasonable cost thereof from the examination fees collected.

(e) Vacation time-sharing sales licenses are due to be renewed annually on or before August 31, on a form prescribed by the commission. September 30 shall be the annual expiration date for such licenses. Any license renewed after August 31 and prior to January 1 of the following year shall be subject to a penalty fee of \$15.00 in addition to the annual license fee of \$50.00. On January 1 of the year following the expiration of a vacation time-sharing sales license, the license may no longer be renewed, and the former license holder shall be required to again meet the requirements of an original applicant before again becoming licensed, including the taking and passing of the license examination. Upon submission of a renewal request in such form as the commission shall prescribe and payment of a \$50.00 renewal fee, the commission shall issue the appropriate license.

(f) The qualifying broker for a vacation time-sharing plan must meet all the general requirements for a time-sharing sales license and must have a current, active real estate broker's license issued under the Alabama Real Estate License Law as well as a time-sharing sales license. If the qualifying broker is not licensed on active status with a real estate company, he may place his real estate broker's license on active status in the name of the time-sharing plan.

(g) Each qualifying broker shall have the duty and responsibility of supervising each seller licensed under him and insuring that every seller licensed under him, as well as the vacation time-sharing plan for which he is the qualifying broker, complies with the provisions of this chapter, and the broker shall be responsible to any injured party for actual damages caused to such party by any violation of this chapter by any vacation time-sharing plan or seller for whom he is acting as qualifying broker.

(h) There shall be a license transfer fee of \$50.00 for any of the following: a change of qualifying broker; a change of name or address of the vacation time-sharing plan; a change of name of a licensee; a change of employment by a licensee; or the activation of an inactive license.

(i) A representative of the vacation time-sharing plan authorized to do so may designate an office located off the site of the time-sharing project as a branch sales office of the vacation time-sharing plan provided that a qualifying broker is designated for each such branch sales office.

(j) A real estate company licensed by the commission may act as an agent for the purpose of reselling time-shares for persons who each own no more than four unit weeks of a given time-sharing plan provided that the contract for such resale shall meet all the requirements of a contract for the initial sale of a vacation time-sharing interest, including the nonwaivable right of the purchaser to cancel the contract within the specified five-day period; and further provided that the qualifying broker for such real estate company be licensed as a time-share seller by the

commission and that any sales agent of the company who participates in the sale of time-shares be licensed by the commission as a time-share seller.

(k) No applicant to be a seller of vacation time-sharing plans shall be issued a license by the commission unless the applicant is designated as a qualifying broker by a representative of a vacation time-sharing plan or real estate company authorized to make such a designation, or unless the applicant is sponsored by a duly authorized qualifying broker who has signed a written statement accepting sponsorship of the applicant, or unless the applicant has his license issued on inactive status and maintained at the office of the commission.

(l) No vacation time-sharing licensee shall perform any of the acts authorized by such license until the license certificate is in his actual possession, if the licensee is a qualifying broker, or in the possession of his sponsoring broker, if the licensee is not a qualifying broker.

(m) A licensee may place his license on inactive status with the commission for a period of up to 24 consecutive months and may renew his license while it is on inactive status. No license which is on inactive status will be reactivated without the commission receiving evidence that the licensee's surety bond is in effect. Any license which has been on inactive status for longer than 24 consecutive months shall automatically expire as of the day following the 24-month period.

(n) It shall be the duty of each licensee to notify the commission of any change of address, business or residential, within 30 days of such change.

(Acts 1983, No. 83-670, p. 1035, § 17; Acts 1984, No. 84-282, p. 472, § 1; Acts 1985, No. 85-750, p. 1204, § 1; Acts 1986, No. 86-375, p. 560, § 1; Acts 1989, No. 89-284, p. 447, § 3.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Brokers  3.

Corpus Juris Secundum:

C.J.S. Brokers §§ 14-24.

§ 34-27-67. Registration required of every plan offered for sale. [References](#)

Every vacation time-sharing plan for sale or offered for sale in this state shall be registered with the Alabama Real Estate Commission as follows:

(1) Upon receipt of an application for registration in the required form, the commission shall forthwith initiate an examination to determine that:

a. The seller may convey or cause to be conveyed the vacation time-sharing plan offered for sale if the purchaser complies with the terms of the offer.

b. The advertising material and general promotional plan are not false or misleading as determined by the commission.

c. The requirements of this article and the rules of the commission have been fulfilled.

d. The seller has not, or, if a corporation, its officers, directors, and principals have not been convicted of any crime involving land dispositions, any crime of moral turpitude, any securities law violation, fraudulent business activity, or any aspect of the vacation time-sharing business in this state, the United States, or any other state or foreign country within the 10 years immediately preceding the date of application, and

has not been subject to any injunction or administrative order within the preceding 10 years involving any of the activities above.

(2) Upon receipt of the application for registration in required form, the commission shall issue a notice of filing to the applicant. If within 45 days from the date of the notice of filing, the commission affirmatively determines upon inquiry and examination that the requirements of this article have been met, the commission shall enter an order registering the vacation time-sharing plan or rejecting the registration. If no order of rejection is entered within 45 days from the date of notice of filing, the vacation time-sharing plan shall be deemed registered unless the applicant has consented in writing to a delay. No reasonable request for an extension of time by the commission shall be withheld; provided that if the commission determines upon inquiry and examination that any of the requirements of this article have not been met, the commission shall notify the applicant that the application for registration must be corrected in the particulars specified within 15 days. If the requirements are not met within the time allowed, the commission shall enter an order rejecting the registration which shall include the findings of fact upon which the order is based. The order rejecting the registration shall not become effective for 20 days during which time the applicant may petition for reconsideration and shall be entitled to a hearing.

(Acts 1983, No. 83-670, p. 1035, § 18; Acts 1985, No. 85-750, p. 1204, § 1.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Estates in Property 1.

Corpus Juris Secundum:

C.J.S. Estates §§ 2-5, 8, 15-21, 116-128, 137, 243.

§ 34-27-68. Commission may seek injunctive relief, etc., for violation of article; investigation; revocation of registration. [References](#)

(a) If it appears that a person, firm, corporation, or any business entity has engaged, or is about to engage, in an act or practice constituting a violation of a provision of this article or rule or order of the commission, the commission, through the Attorney General, may institute legal actions to enjoin the act or practice and to enforce compliance with this article or any rule or order of the commission or to have a receiver or conservator appointed. To prevail in such action, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist or that substantial or irreparable damage would result from the continued violation thereof.

(b) The commission may:

(1) Make any public or private investigation which it deems necessary, either within or outside of this state, to determine whether any person has violated or is about to violate this article or any rule or order hereunder, or to aid in the enforcement of this article or in the prescribing of rules and forms hereunder.

(2) Require or permit any person to file a statement in writing, under oath or otherwise as the commission may determine, as to all facts and circumstances concerning the matter to be investigated.

(3) For the purpose of any investigation or proceeding hereunder, the commission or any officer designated by rule may administer oaths or affirmations, and upon its own motion or upon request of any party shall subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of relevant facts of any other matter reasonably calculated to lead to the discovery of material evidence.

(4) Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected hereby, the commission, through the Attorney General may apply to the circuit court for an order compelling compliance.

(5) Issue an order requiring the seller to cease and desist from any unlawful practice and to take such affirmative action as in the judgment of the commission will carry out the purposes of this article, if, after notice and hearing, the commission determines that a seller has violated any provisions of this article.

(6) Make findings of fact in writing that the public interest may be harmed by delay in issuing an order and in such case may issue a temporary cease and desist order. Prior to issuing the temporary cease and desist order, the commission, whenever possible by telephone or otherwise, shall give notice of the proposal to issue a cease and desist order to the seller. Every temporary cease and desist order shall include in its terms a provision that upon request a hearing will be held promptly to determine whether or not it becomes permanent.

(7) Revoke or suspend the registration of a vacation time-sharing plan if, after notice and hearing, upon a written finding of fact, it determines that the seller or sellers in whose name the plan is registered, or any agent therefor, has:

- a. Failed to comply with the terms of any order of the commission; or
- b. Been convicted in any court of competent jurisdiction subsequent to filing of the application for registration, of a crime involving fraud, deception, false pretenses, misrepresentation, false advertising, or dishonest dealing; or
- c. Had a final judgment rendered against him in any court of competent jurisdiction, when such judgment involved the sale, marketing or operation of any time-share plan or real estate transaction; or
- d. Disposed of, concealed or diverted any funds or assets of any person so as to defeat the rights of vacation time-sharing plan purchasers; or
- e. Failed to faithfully perform any stipulation or agreement made with the commission as an inducement to grant any registration, to reinstate any registration, or to approve any promotional plan or advertisement; or
- f. Made an intentional misrepresentation or concealed a material fact in an application for registration; or
- g. Made a misrepresentation or concealed any material fact in the sale, marketing or operation of a registered time-sharing plan; or
- h. Failed to comply with the terms of a sales contract; or
- i. Failed to make timely delivery of a deed to any purchaser to whom a deed is due to be delivered; or
- j. Violated any other provision of this article or any rule or regulation of the commission.

The reinstatement of a registration suspended or revoked as a result of a violation under this article may be made conditional upon the fulfillment of such reasonable conditions as are imposed by the commission.

(8) Issue a cease and desist order instead of revoking a registration if it finds, after notice and hearing, that the seller has been guilty of a violation for which revocation could be ordered.


(9) In lieu of, or in addition to, revoking or suspending a registration or issuing a cease and desist order, impose a penalty of not less than \$100.00 nor more than \$2,000.00 per violation upon the seller(s) in whose name(s) the plan is registered if it finds, after notice and hearing, that such seller(s), or any agent therefor, has been guilty of a violation for which revocation or suspension could be ordered.

(Acts 1983, No. 83-670, p. 1035, § 19; Acts 1985, No. 85-750, p. 1204, § 1.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Injunction  89(5).

Corpus Juris Secundum:

C.J.S. Injunctions §§ 133-135.

§ 34-27-69. Surety bond; suspension, etc., of license for violation of article; reinstatement; relicensure; board must be notified of initiation, etc., of legal action. [References](#)

(a) Every applicant for a license under this article, either original or renewal, shall furnish a surety bond payable to the State of Alabama in the amount of \$5,000.00 if a time-sharing salesman or \$10,000.00 if a broker, with a surety company authorized to do business in Alabama, which bond shall provide that the obligor therein will pay up to \$5,000.00 or \$10,000.00, respectively, the aggregate sum of all judgments which may be recovered against such licensee for actual loss or damage arising from his activities conducted under this article. Said bond shall be filed with the Alabama Real Estate Commission prior to the issuance of such license. A new bond or a renewal or continuation of the original bond shall be required for each licensing period. If a continuous bond is filed with the commission prior to the issuance of such license, no such renewal bond must be filed as long as the continuous bond remains in force and effect. In the event the continuous bond is revoked by the surety company, it shall immediately notify the commission and the licensee shall have 20 days in which to file another bond with the Alabama Real Estate Commission or his license shall be suspended until such new bond is filed.

(b) If at any time a final judgment is rendered against a licensee under this article and the final judgment shall result from or involve any activity covered by this article, the license of the licensee shall be automatically suspended. A judgment shall be considered final when no further relief is available from said judgment in the appellate courts of Alabama. In case of such suspension of license, the commission shall give notice to the licensee that his license is suspended, and said licensee shall deliver this license to the commission for disposition. Upon request by the suspended licensee, the commission will set a date designating a time and place thereon for a hearing on the question of whether the license under suspension should be revoked,

whether the suspension should be continued for a designated period or whether the suspension should be continued until terminated by the commission upon the fulfillment of reasonable conditions imposed by the commission. The hearing shall be conducted in accordance with Section 34-27-37 and such appropriate rules and regulations as may be adopted from time to time by the Alabama Real Estate Commission. No licensee under this article whose license hereunder has been revoked may apply for another license hereunder until at least two years after the date of such revocation; and, in the event of such application for reinstatement, he shall meet all the requirements imposed upon an original applicant for a license under this article; and, furthermore, shall not be relicensed without approval of such relicensing by a majority of the members of the Alabama Real Estate Commission.

(c) Every licensee under this article shall be required to notify the Alabama Real Estate Commission of any civil or criminal action filed or initiated against such licensee within 10 days of the receipt of notice by the licensee of the pending civil or criminal action when the civil or criminal action involves a transaction under this article, or involves the indebtedness of the licensee concerning expenses incurred in the development or continuation of a time-sharing plan, or involves an alleged act of fraud, theft, misrepresentation, embezzlement, or extortion, or involves an alleged felony. The notification shall be in writing and shall include a copy of any civil complaint or other document alleging a complaint or criminal offense; or, if the licensee is not in possession of such legal documents, the notification shall include a notarized statement by the licensee of the substance of the civil or criminal action.

(d) Every licensee under this article shall be required to notify the Alabama real estate commission of the outcome of any civil or criminal action of the type described in subsection (c) of this section within 10 days of the notice to the licensee of such outcome. This notification shall be in writing and shall include a copy of any judgment, order or other pertinent document issued by the court having jurisdiction of the matter; or, if licensee is not in possession of such legal documents, the notification shall include a notarized statement by the licensee of the nature of the verdict, settlement, dismissal, or other outcome of the subject civil or criminal action. (Acts 1983, No. 83-670, p. 1035, § 20.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Brokers ☒3.

Corpus Juris Secundum:

C.J.S. Brokers §§ 14-24.


ARTICLE 4. REAL ESTATE CONSUMER'S AGENCY AND DISCLOSURE ACT.

ANNOTATIONS

CASENOTES

Generally 1

1. Generally

Under common law in effect prior to enactment of Real Estate Consumer's Agency and Disclosure Act, a real-estate broker could not serve as the agent of a buyer and also of the seller unless both parties, with full knowledge, consented to the broker's dual representation. *Fisher v. Comer Plantation, Inc.*, 772 So.2d 455 (Ala.2000). Brokers  32

§ 34-27-80. Short title. [Historical Notes](#)

This article shall be known and may be cited as the "Real Estate Consumer's Agency and Disclosure Act."

(Acts 1995, No. 95-211, p. 341, § 1.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section became effective October 1, 1996.

§ 34-27-81. Definitions. [Historical Notes](#) [References](#)

As used in this article, the following words shall have the following meanings:

(1) Agency agreement. A written agreement between a broker and a client which creates a fiduciary relationship between the broker and a principal, who is commonly referred to as a client.

(2) Broker. Any person licensed as a real estate broker pursuant to Articles 1 and 2 of Chapter 27 of this title.

(3) Brokerage agreement. A specific written agreement between a brokerage firm and a consumer which establishes a brokerage relationship. The brokerage agreement shall contain a statement of the terms and conditions of the brokerage services to be provided.

(4) Brokerage service. Any service, except for rental or property management services, provided by a broker or licensee to another person and includes all activities for which a real estate license is required under Articles 1 and 2 of Chapter 27 of this title.

(5) Consumer. A person who obtains information, advice, or services concerning real estate from a real estate licensee.

(6) Client. A person who has an agency agreement with a broker for brokerage service, whether he or she be buyer or seller.

(7) Customer. A person who is provided brokerage services by a broker or licensee but who is not a client of the broker.

(8) Dual agency. An agency relationship in which the same brokerage firm represents both the seller and the buyer in the same real estate transaction. Circumstances which establish a dual agency include, but are not limited to, one of the following:

a. When two or more licensees licensed under the same broker each represent a different party to the transaction.

b. When one licensee represents both the buyer and seller in a real estate transaction.

(9) Informed consent. A consumer's agreement to allow something to happen which is

based upon full disclosure of facts needed to choose appropriate brokerage services.

(10) Licensee. Any broker, salesperson, or company.

(11) Limited consensual dual agent. A licensee who, with the written informed consent of all parties to a contemplated real estate transaction, is engaged as an agent for both the buyer and seller. Circumstances which establish dual agency include, but are not limited to, one of the following:

a. When two or more licensees licensed under the same broker each represent a different party to the transaction.

b. When one licensee represents both the buyer and seller in a real estate transaction.

(12) Material fact. A fact that is of significance to a reasonable party which affects the party's decision to enter into a real estate contract.

(13) Qualifying broker. A broker under whom a corporation, partnership, or branch office is licensed, or a broker licensed to do business as a sole proprietorship who is responsible for supervising the acts of the company, or proprietorship and all real estate licensees licensed therewith.

(14) Real estate transaction. The purchase, sale, lease and rental, option, or exchange of an interest in real estate.

(15) Single agent. A licensee who is engaged by and represents only one party in a real estate transaction. A single agent includes, but is not limited to, one of the following:

a. Buyer's agent, which means a broker or licensee who is engaged by and represents only the buyer in a real estate transaction.

b. Seller's agent, which means a broker or licensee who is engaged by and represents only the seller in a real estate transaction.

(16) Sub-agent. A licensee who is empowered to act for another broker in performing real estate brokerage tasks for a principal, and who owes the same duties to the principal as the agent of the principal.

(17) Transaction broker. A licensee who assists one or more parties in a contemplated real estate transaction without being an agent or fiduciary or advocate for the interest of that party to a transaction.

(Acts 1995, No. 95-211, p. 341, § 2; Act 98-618, p. 1359, § 1.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section became effective October 1, 1996.

Amendment notes:

The 1998 amendment, effective August 1, 1998, redesignated subdivisions (8)-(17) as subdivisions (17), (8), (13), (9)-(12) and (14)-(16), respectively, in subdivision (17), as so redesignated, substituted "Transaction broker." for "Contract broker.", and substituted "that party" for "any party".

REFERENCES

RESEARCH REFERENCES

Treatises and Practice Aids

Restatement (3d) of Agency § 3.15, Subagency.

§ 34-27-82. Roles and duties of licensees; written disclosure documents; exceptions; brokerage agreements. [Historical Notes](#) [References](#)

(a) When engaged in any real estate transaction, the licensee may act as a single agent, sub-agent, a limited consensual dual agent, or as a transaction broker.

(b) At the initial contact between a licensee and the consumer and until such time a broker enters into a specific written agreement to establish an agency relationship with one or more of the parties to a transaction, the licensee shall not be considered an agent of that consumer. An agency relationship shall not be assumed, implied, or created without a written bilateral agreement establishing the terms of the agency relationship.

(c) As soon as reasonably possible and before any confidential information is disclosed to any other person by a licensee, the licensee shall provide a written disclosure form to a consumer for signature describing the alternative types of brokerage services, as identified in subsection (a), that are available to clients and customers of real estate brokerage companies. The licensee shall also inform a consumer as to the specific types of brokerage services that are provided by his or her company. A broker shall not be required to offer or engage in any one or in all of the alternative brokerage arrangements specified in subsection (a). The licensee will provide a written form to the consumer for their signature describing the alternative types of brokerage arrangements available. All rental or property management services are excluded from the requirements of this subsection.

(d) A licensee shall not be required to comply with the provisions of subsection (c) when engaged in transactions with any corporation, non-profit corporation, professional corporation, professional association, limited liability company, partnership, any partnership created under the Uniform Partnership Act (commencing at Section 10-8A-101), real estate investment trust, business trust, charitable trust, family trust, or any governmental entity in transactions involving real estate.

(e) After disclosure, the consumer may make an affirmative election of a specific type of brokerage arrangement that is available from the real estate brokerage company. The brokerage agreement shall contain a statement of the terms and conditions of the brokerage services that the broker will provide. In the absence of a signed brokerage agreement between the parties, the transaction brokerage relationship shall remain in effect.

(f) When serving as a transaction broker, the duties of the licensee to all the parties to a real estate transaction are limited to those which are enumerated in Section 34-27-84. A signed brokerage agreement between the parties or, in the absence of a signed brokerage agreement, the continuation of the transaction brokerage relationship, shall constitute informed consent by the consumer as to the services the consumer shall receive from the broker.

(g) Disclosure forms shall be provided to buyers and sellers. All real estate brokerage firms operating within the State of Alabama shall use the same agency disclosure forms. Disclosure forms describing the alternative types of brokerage services identified above shall be written by the Alabama Real Estate Commission.

(h) Nothing in this section shall prohibit the consumer from entering into a written contract with a broker which contains provisions for services not specifically identified in the written disclosure form.

(Acts 1995, No. 95-211, p. 341, § 3; Act 98-618, p. 1359, § 1.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section became effective October 1, 1996.

Amendment notes:

The 1998 amendment, effective August 1, 1998, in subsection (a) substituted "transaction broker" for "contract broker"; in subsection (b), in the first sentence substituted "consumer and until such time" for "public and until the time", substituted "the licensee shall not be considered an agent of that consumer" for "the broker shall be considered to be a contract broker and shall not be considered an agent of any party in the transaction"; redesignated former subsections (d) to (g) as subsections (e) to (h), respectively; inserted subsection (d); in subsection (f), as so redesignated, substituted "transaction broker" for "contract broker" in two places; and made nonsubstantive changes.

Code Commissioner's Notes

In 1998, the Code Commissioner in the last sentence of subsection (e) inserted "transaction" for "contract" preceding "brokerage relationship" to conform the language to other amendatory changes and to correct an apparent clerical error.

REFERENCES

ADMINISTRATIVE CODE

19 Ala. Admin. Code 790-X-3-.13, Real Estate Board; Disciplinary Actions: Agency/Brokerage Services Disclosure.

LIBRARY REFERENCES

American Digest System:

Brokers  3, 4.

Corpus Juris Secundum:

C.J.S. Brokers §§ 6-12, 14-24.

RESEARCH REFERENCES

Treatises and Practice Aids

Restatement (3d) of Agency § 3.15, Subagency.

§ 34-27-83. Agency disclosure office policy. [Historical Notes](#) [References](#)

Any broker acting in a real estate transaction shall adopt a written agency disclosure office policy which specifically enumerates the types of brokerage service arrangements a licensee may offer or accept.

(a) The qualifying broker for each brokerage company shall provide every licensee a copy of the agency disclosure policy regarding the types of brokerage services offered by their company. This policy shall be explained to all licensees at least once a year.

(b) A form acknowledging receipt of the office policy statement and a satisfactory explanation of its contents shall be signed by each licensee and a copy retained by the brokerage company for three years.

(Acts 1995, No. 95-211, p. 341, § 4.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section became effective October 1, 1996.

REFERENCES

ADMINISTRATIVE CODE

19 Ala. Admin. Code 790-X-3-.14, Real Estate Board; Disciplinary Actions: Agency/Brokerage Office Policy.

LIBRARY REFERENCES

American Digest System:

Brokers 4.

Corpus Juris Secundum:

C.J.S. Brokers §§ 6-12.

§ 34-27-84. Obligations of licensees. [Historical Notes](#) [References](#)

(a) Licensees shall have all of the following obligations to all parties in a real estate transaction:

(1) To provide brokerage services to all parties to the transaction honestly and in good faith.

(2) To exercise reasonable skill and care in providing brokerage services to all parties.

(3) To keep confidential any information given to the licensee in confidence, or any information obtained by the licensee that the licensee knows a reasonable individual would want to keep confidential, unless disclosure of this information is required by law, violates a fiduciary duty to a client, becomes public knowledge, or is authorized by the party in writing.

(4) To account for all property coming into the possession of the licensee that belongs to any party to the real estate transaction.

(5) When assisting a party in the negotiation of a real estate transaction, to present all written offers in a timely and truthful manner.

(6) To act on behalf of the licensee or his or her immediate family, or on behalf of any other individual, organization, or business entity in which the licensee has a personal interest only with prior timely written disclosure of this interest to all parties to the transaction.

(b) A licensee may provide requested information which affects a transaction to any party who requests the information, unless disclosure of the information is prohibited by law or in this article.

(c) When accepting an agreement to list an owner's property for sale, the broker or his or her licensee shall, at a minimum, accept delivery of and present to the consumer all offers, counteroffers, and addenda to assist the consumer in negotiating offers, counteroffers, and addenda, and to answer the consumer's questions relating to the transaction.

(Acts 1995, No. 95-211, p. 341, § 5; Act 2005-314, 1st Sp. Sess., p. 646, § 1.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section became effective October 1, 1996.

The 2005 amendment, effective November 1, 2005, added subsection (c).

REFERENCES

LIBRARY REFERENCES

American Digest System:

Brokers  3, 4.

Corpus Juris Secundum:

C.J.S. Brokers §§ 6-12, 14-24.

RESEARCH REFERENCES

Treatises and Practice Aids

Restatement (3d) of Agency § 3.15, Subagency.

§ 34-27-85. Services licensees required to provide. [Historical Notes](#) [References](#)

(a) In addition to the duties enumerated in Section 34-27-84, a licensee shall provide all of the following services to clients:

(1) Loyally represent the best interests of the client by placing the interests of the client ahead of the interests of any other party, unless loyalty to a client violates the duties of the licensee to other parties under Section 34-27-84, or is otherwise prohibited by law.

(2) Disclose to the client all information known by the licensee that is material to the transaction and not discoverable by the client through reasonable investigation and observation, except for confidential information as provided in subdivision (3) of subsection (a) of Section 34-27-84. A licensee shall have no affirmative duty to discover the information.

(3) Fulfill any obligation required by the agency agreement, and any lawful instructions of the client that are within the scope of the agency agreement, that are not inconsistent with other duties as enumerated in this article.

(b) A broker who represents more than one client in a real estate transaction owes the duties as specified in subsection (a) to each client, except where the duties to one client will violate the fiduciary duties of the licensee to other clients.

(c) A broker may provide brokerage services as a limited consensual dual agent only with the prior written, informed consent of all clients of the broker in the transaction.
(Acts 1995, No. 95-211, p. 341, § 6.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section became effective October 1, 1996.

REFERENCES

LIBRARY REFERENCES

American Digest System:

Brokers ☒4.

Corpus Juris Secundum:

C.J.S. Brokers §§ 6-12.

§ 34-27-86. Misrepresentation or false information given by licensee. [Historical Notes](#)
[References](#)

(a) A client is not liable for a misrepresentation made by a broker in connection with the broker providing brokerage services unless the client knows or should have known of the misrepresentation or the broker is repeating a misrepresentation made by the client to the broker.

(b) A licensee shall not be liable for providing false information to a party in a real estate transaction if the false information was provided to the licensee by a client of the licensee or by a customer or by another licensee unless the licensee knows or should have known that the information was false.

(Acts 1995, No. 95-211, p. 341, § 7.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section became effective October 1, 1996.

REFERENCES

LIBRARY REFERENCES

American Digest System:

Brokers ☒102.

Corpus Juris Secundum:

C.J.S. Brokers §§ 90, 95, 98, 104, 106-107.

§ 34-27-87. Duties supersede duties based on common law. [Historical Notes](#) [References](#)

The duties of licensees as specified in this article or in rules promulgated by the Alabama Real Estate Commission shall supersede any duties of a licensee to a party to a real estate transaction which are based upon common law principles of agency to the extent that those common law duties are inconsistent with the duties of licensees as specified in this article.

(Acts 1995, No. 95-211, p. 341, § 8.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section became effective October 1, 1996.

REFERENCES

ADMINISTRATIVE CODE

19 Ala. Admin. Code 790-X-3-.13, 790-X-3-.14, Real Estate Board; Disciplinary Actions.

RESEARCH REFERENCES

Treatises and Practice Aids

Restatement (3d) of Agency § 3.15, Subagency.

§ 34-27-88. Violations. [Historical Notes](#)

A violation or disregard of any provision of this article shall constitute a violation actionable by the commission pursuant to Section 34-27-36, as amended.
(Acts 1995, No. 95-211, p. 341, § 9.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section became effective October 1, 1996.

ARTICLE 5. INTERFERENCE WITH A REAL ESTATE BROKERAGE RELATIONSHIP.

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this article is effective April 4, 2000.

§ 34-27-100. Definitions. [Historical Notes](#)

For the purposes of this article, the following terms shall have the following meanings:

(1) Actual introduction. a. When the buyer, seller, landlord, or tenant has been referred to the real estate licensee by the person or entity seeking the referral fee prior to the time the customer has executed a real estate brokerage services disclosure form or waived execution in writing or the customer has executed a buyer's agency agreement, property listing agreement, or a transaction brokerage agreement; or

b. For real estate transactions in which the law of this state does not require the presentation of a real estate brokerage services disclosure form, when the buyer, seller,

landlord, or tenant has been referred to the real estate licensee by the person or entity seeking the referral fee prior to any contact between the buyer, seller, landlord, or tenant and the real estate licensee during which their real estate business has been discussed.

(2) Interference with a real estate brokerage relationship. Demanding a referral fee from a real estate licensee when reasonable cause for payment does not exist. The term "interference with a real estate brokerage relationship" may also include a threat by a third party to reduce, withhold, or eliminate any relocation or other benefits, or the actual reduction, withholding, or elimination of any relocation or other benefit, in order to generate a referral fee from a real estate broker when reasonable cause for payment does not exist. Notwithstanding the foregoing, either of the following shall not constitute interference with a real estate brokerage relationship:

a. Communications between an employer or its representative and an employee concerning relocation policies and benefits.

b. Advising a party of the right to allow a brokerage relationship to expire pursuant to its own terms or not to renew the brokerage relationship upon expiration.

(3) Real estate brokerage relationship. A relationship entered into between a real estate broker or salesperson and a buyer, seller, landlord, or tenant under which the real estate broker or salesperson engages in any of the acts set forth in Alabama real estate license law, but the relationship does not exist prior to actual introduction of the relationship as provided in subdivision (1).

(4) Reasonable cause for payment. When an actual introduction of business has been made, a subagency relationship between brokers exists, a contractual referral fee relationship or other agreement exists, or a contractual cooperative brokerage relationship exists.

(5) Referral fee. Any fee or commission paid by a real estate licensee to any person or entity, other than a cooperative commission offered by a listing real estate broker to a selling real estate broker or by a selling real estate broker to a listing real estate broker.

(Act 2000-210, p. 277, § 1.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective April 4, 2000.

§ 34-27-101. Violations; damages. [Historical Notes](#) [References](#)

(a) No licensed real estate broker shall be required to pay a referral fee or commission when reasonable cause for payment does not exist.

(b) No third party shall knowingly interfere with the real estate brokerage relationship of a real estate licensee.

(c) Any person aggrieved by a violation of any provision of this article may bring a civil action in any court of competent jurisdiction. The damages recoverable in such an action shall be actual damages and, in addition, the court may award an amount up to three times the amount of actual damages sustained as a result of any violation of this article, plus reasonable attorney fees and expenses.

(Act 2000-210, p. 277, § 2.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective April 4, 2000.

REFERENCES

LIBRARY REFERENCES

American Digest System:

Brokers ☒ 66, 106; Torts ☒ 12.

Corpus Juris Secundum:

C.J.S. Agency § 24; Bro

HB276 (2007 Legislation)

1 HB276
2 87749-1
3 By Representative Galliher
4 RFD: Boards and Commissions
5 First Read: 08-MAR-07

1 87749-1:n:02/07/2007:JRC/LJ LRS2007-406

2

3

4

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6

7

8 SYNOPSIS: Under existing law, real estate
9 salespersons and associate brokers are required to
10 list the name of their qualifying broker or company
11 in an equal or larger size type than their own name
12 on any advertisement that they use.

13 This bill would remove the requirements
14 relating to the specific size of letters in
15 advertisements used by real estate salespersons and
16 associate brokers.

17 Also, under existing law, reciprocal broker
18 licenses are granted to persons who meet certain
19 criteria established by the Real Estate Commission.

20 This bill would provide further for the
21 criteria for a reciprocal broker license.

22

23 A BILL

24 TO BE ENTITLED

25 AN ACT

26

1 To amend Sections 34-27-32 and 34-27-36, Code of
2 Alabama 1975, relating to reciprocal broker licenses and
3 advertising by real estate salespersons and associate brokers,
4 to provide further for the criteria for a reciprocal broker
5 license and remove the requirements relating to the specific
6 size of letters in advertisements used by real estate
7 salespersons and associate brokers.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9 Section 1. Sections 34-27-32 and 34-27-36, Code of
10 Alabama 1975, are amended to read as follows:

11 "§34-27-32.

12 "(a) A license for a broker or a salesperson shall
13 be registered to a specific real estate office and shall be
14 issued only to, and held only by, a person who meets all of
15 the following requirements:

16 "(1) Is trustworthy and competent to transact the
17 business of a broker or salesperson in a manner that
18 safeguards the interest of the public.

19 "(2) Is a person whose application or license has
20 not been rejected or revoked in any state within two years
21 prior to date of application on any grounds other than failure
22 to pass a written examination. Any applicant whose license has
23 been revoked shall meet all the requirements imposed on an
24 original applicant for a license and shall not be relicensed
25 without the approval of the commissioners.

26 "(3) Is at least 19 years old.

1 "(4) Is a citizen of the United States or is an
2 alien with permanent resident status.

3 "(5) Is a person who, if a nonresident, agrees to
4 sign an affidavit stating the following and in the following
5 form:

6 "I, as a nonresident applicant for a real estate
7 license and as a licensee, agree that the Alabama Real Estate
8 Commission shall have jurisdiction over me in any and all of
9 my real estate related activities the same as if I were an
10 Alabama resident licensee. I agree to be subject to
11 investigations and disciplinary actions the same as Alabama
12 resident licensees. Further, I agree that civil actions may be
13 commenced against me in any court of competent jurisdiction in
14 any county of the State of Alabama.

15 "I hereby appoint the Executive Director or the
16 Assistant Executive Director of the Alabama Real Estate
17 Commission as my agent upon whom all disciplinary, judicial,
18 or other process or legal notices may be served. I agree that
19 any service upon my agent shall be the same as service upon me
20 and that certified copies of this appointment shall be deemed
21 sufficient evidence and shall be admitted into evidence with
22 the same force and effect as the original might be admitted. I
23 agree that any lawful process against me which is served upon
24 my agent shall be of the same legal force and validity as if
25 personally served upon me and that this appointment shall
26 continue in effect for as long as I have any liability
27 remaining in the State of Alabama. I understand that my agent

1 shall, within a reasonable time after service upon him or her,
2 mail a copy of the service by certified mail, return receipt
3 requested, to me at my last known business address.

4 "I agree that I am bound by all the provisions of
5 the Alabama Real Estate License Law the same as if I were a
6 resident of the State of Alabama.

7

8

Legal signature of appli-
cant

9 "The commission may reject the application of any
10 person who has been convicted of or pleaded guilty or nolo
11 contendere to a felony or a crime involving moral turpitude.
12 "(b)(1) A person who holds a current real estate
13 salesperson license in another state, including persons who
14 move to and become residents of Alabama, shall apply for a
15 reciprocal salesperson license on a form prescribed by the
16 commission. A person who holds a current broker license in
17 another state, including persons who move to and become
18 residents of Alabama, shall apply for a reciprocal broker
19 license on a form prescribed by the commission. The applicant
20 shall submit proof that he or she has a current real estate
21 license in another state as evidenced by a certificate of
22 licensure, together with any other information required by the
23 commission. The applicant shall also show proof that he or she

1 ~~has completed at least six hours of course work in Alabama~~
2 ~~real estate which is approved by the commission.~~ Applicants
3 for a reciprocal license shall not be subject to the ~~complete~~
4 examination or temporary license requirements of Section
5 34-27-33, ~~but shall pass a reasonable written examination~~
6 ~~prepared by the commission on the subject of Alabama real~~
7 ~~estate.~~ A person who holds a reciprocal license shall show
8 proof of completion of continuing education either by meeting
9 the requirements of Section 34-27-35 or by showing proof that
10 his or her other state license remains active in that state.
11 The fees for issuance and renewal of a reciprocal license
12 shall be the same as those for original licenses pursuant to
13 Section 34-27-35. The recovery fund fee for issuance of a
14 reciprocal license shall be the same as for an original
15 license pursuant to Section 34-27-31.

16 "(2) A person who holds a current Alabama license
17 who moves to and becomes a resident of the state shall within
18 10 days submit to the commission notice of change of address
19 and all other license status changes.

20 "(c) A person who does not hold a current real
21 estate broker license in another state desiring to be a real
22 estate broker in this state shall apply for a broker's license
23 on a form prescribed by the commission which shall specify the
24 real estate office to which he or she is registered. Along
25 with the application, he or she shall submit all of the
26 following:

1 "(1) Proof that he or she has had an active real
2 estate salesperson's license in any state for at least 24
3 months of the 36 month period immediately preceding the date
4 of application.

5 "(2) Proof that he or she is a high school graduate
6 or the equivalent.

7 "(3) Proof that he or she has completed a course in
8 real estate approved by the commission, which shall be a
9 minimum of 60 clock hours.

10 "(4) Any other information requested by the
11 commission.

12 "(d) A person who does not hold a current real
13 estate salesperson license in another state desiring to be a
14 real estate salesperson in this state shall apply for a
15 salesperson's license with the commission on a form prescribed
16 by the commission which shall specify the real estate office
17 to which he or she is registered. Along with the application
18 he or she shall furnish all of the following:

19 "(1) Proof that he or she is a high school graduate
20 or the equivalent.

21 "(2) Proof that he or she has successfully completed
22 a course in real estate approved by the commission, which
23 shall be a minimum of 60 clock hours.

24 "(3) Any other information required by the
25 commission.

26 "(e) An application for a company license for a
27 corporation, partnership, or branch office shall be made by a

1 qualifying broker on a form prescribed by the commission. The
2 qualifying broker shall be an officer, partner, or employee of
3 the company.

4 "(f) An applicant for a company or broker license
5 shall maintain a place of business.

6 "(g) If the applicant for a company or broker
7 license maintains more than one place of business in the
8 state, he or she shall have a company license for each
9 separate location or branch office. Every application shall
10 state the location of the branch office and the name of its
11 qualifying broker. Each branch office shall be under the
12 direction and supervision of a qualifying broker licensed at
13 that address. No person may serve as qualifying broker at more
14 than one location. The qualifying broker for the branch office
15 and the qualifying broker for the corporation, partnership, or
16 sole proprietorship shall share equal responsibility for the
17 real estate activities of all licensees assigned to the branch
18 office.

19 "(h) No person shall be a qualifying broker for more
20 than one company or for a company and on his or her own behalf
21 unless:

22 "(1) All companies for which he or she is and
23 proposes to be the qualifying broker consent in writing.

24 "(2) He or she files a copy of the written consent
25 with the commission.

26 "(3) He or she will be doing business from the same
27 location.

1 "A person licensed under a qualifying broker may be
2 engaged by one or more companies with the same qualifying
3 broker.

4 "(i) A company license shall become invalid on the
5 death or disability of a qualifying broker. Within 30 days
6 after the death or disability, the corporation, or the
7 remaining partners or the successor partnership, if any, may
8 designate another of its officers, members, or salespersons to
9 apply for a license as temporary qualifying broker. The person
10 designated as temporary qualifying broker shall either be a
11 broker or have been a salesperson for at least one year prior
12 to filing the application. If the application is granted, the
13 company may operate under that broker for no more than six
14 months after the death or disability of its former qualifying
15 broker. Unless the company designates a fully licensed broker
16 as the qualifying broker within the six months, the company
17 license shall be classified inactive by the commission.

18 "(j) The commission may charge any applicant a fee
19 for a criminal record search of the applicant in the same
20 amount as is charged the commission by the Department of
21 Public Safety or other agency for the search.

22 "(k) The commission may charge a fee of ten dollars
23 (\$10) for furnishing any person a copy of a license,
24 certificate or other official record of the commissioner.

25 "\$34-27-36.

26 "(a) The commission or its staff may on its own, or
27 on the verified complaint in writing of any person,

1 investigate the actions and records of a licensee. The
2 commission may issue subpoenas and compel the testimony of
3 witnesses and the production of records and documents during
4 an investigation. If probable cause is found, a formal
5 complaint shall be filed and the commission shall hold a
6 hearing on the formal complaint. The commission shall revoke
7 or suspend the license or impose a fine of not less than one
8 hundred dollars (\$100) nor more than two thousand five hundred
9 dollars (\$2,500), or both, or reprimand the licensee in each
10 instance in which the licensee is found guilty of any of the
11 following acts set out in this section. The commission may
12 revoke or suspend a license until such time as the licensee
13 has completed an approved continuing education course and/or
14 made restitution to accounts containing funds to be held for
15 other parties. The commission may also stay the revocation or
16 suspension of a license and require completion of an approved
17 education course and/or the making of restitution to accounts
18 containing funds to be held for other parties.

19 "(1) Procuring or attempting to procure, a license,
20 for himself or herself or another, by fraud,
21 misrepresentation, or deceit, or by making a material
22 misstatement of fact in an application for a license.

23 "(2) Engaging in misrepresentation or dishonest or
24 fraudulent acts when selling, buying, trading, or renting real
25 property of his or her own or of a spouse or child or parent.

26 "(3) Making a material misrepresentation, or failing
27 to disclose to a potential purchaser or lessee any latent

1 structural defect or any other defect known to the licensee.
2 Latent structural defects and other defects do not refer to
3 trivial or insignificant defects but refer to those defects
4 that would be a significant factor to a reasonable and prudent
5 person in making a decision to purchase or lease.

6 "(4) Making any false promises of a character likely
7 to influence, persuade, or induce any person to enter into any
8 contract or agreement.

9 "(5) Pursuing a continued and flagrant course of
10 misrepresentation or the making of false promises through
11 agents or salespersons or any medium of advertising or
12 otherwise.

13 "(6) Publishing or causing to be published any
14 advertisement which deceives or which is likely to deceive the
15 public, or which in any manner tends to create a misleading
16 impression or which fails to identify the person causing the
17 advertisement to be placed as a licensed broker or
18 salesperson.

19 "(7) Acting for more than one party in a transaction
20 without the knowledge and consent in writing of all parties
21 for whom he or she acts.

22 "(8)a. Failing, within a reasonable time, to
23 properly account for or remit money coming into his or her
24 possession which belongs to others, or commingling money
25 belonging to others with his or her own funds.

26 "b. Failing to deposit and account for at all times
27 all funds belonging to, or being held for others, in a

1 separate federally insured account or accounts in a financial
2 institution located in Alabama.

3 "c. Failing to keep for at least three years a
4 complete record of funds belonging to others showing to whom
5 the money belongs, date deposited, date of withdrawal, and
6 other pertinent information.

7 "(9) Placing a sign on any property offering it for
8 sale, lease, or rent without the consent of the owner.

9 "(10) Failing to voluntarily furnish a copy of each
10 listing, contract, lease, and other document to each party
11 executing the document with reasonable promptness.

12 "(11) Paying any profit, compensation, commission,
13 or fee to, or dividing any profit, compensation, commission,
14 or fee with, anyone other than a licensee or multiple listing
15 service. This subdivision shall not prevent an associate
16 broker or salesperson from owning any lawfully constituted
17 business organization, including, but not limited to, a
18 corporation or limited liability company or limited liability
19 corporation, for the purpose of receiving payments
20 contemplated in this subsection. The business organization
21 shall not be required to be licensed under this chapter, and
22 shall not engage in any other activity requiring a real estate
23 license.

24 "(12) Paying or receiving any rebate from any person
25 in a real estate transaction.

26 "(13) Inducing any party to a contract to break the
27 contract for the purpose of substituting a new contract, where

1 the substitution is motivated by the personal gain of the
2 licensee.

3 "(14) If the licensee is a salesperson or associate
4 broker, accepting a commission or other valuable consideration
5 for performing any act for which a license is required from
6 any person except his or her qualifying broker.

7 "(15) If a qualifying broker or company, allowing a
8 salesperson or associate broker licensed under him or her to
9 advertise himself or herself as a real estate agent without
10 the name or trade name of the qualifying broker or company
11 appearing prominently on the advertising ~~in letters at least~~
12 ~~as large as the name of the salesperson or associate broker;~~
13 or if the licensee is a salesperson or associate broker,
14 advertising himself or herself as a real estate agent without
15 the name or trade name of the qualifying broker or company
16 under whom the salesperson or associate broker is licensed
17 appearing prominently on the advertising ~~in letters at least~~
18 ~~as large as the name of the salesperson or associate broker.~~

19 "(16) Presenting to the commission, as payment for a
20 fee or fine, a check that is returned unpaid.

21 "(17) Establishing an association, by employment or
22 otherwise, with an unlicensed person who is expected or
23 required to act as a licensee, or aiding, abetting, or
24 conspiring with a person to circumvent the requirements of
25 this chapter.

26 "(18) Failing to disclose to an owner the licensee's
27 intention to acquire, directly or indirectly, an interest in

1 property which he or she or his or her associates have been
2 employed to sell.

3 "(19) Violating or disregarding any provision of
4 this chapter or any rule, regulation, or order of the
5 commission.

6 "(20) If a broker, accepting a "net listing"
7 agreement for sale of real property or any interest therein. A
8 "net listing" is one that stipulates a net price to be
9 received by the owner with the excess due to be received by
10 the broker as his or her commission.

11 "(21) Misrepresenting or failing to disclose to any
12 lender, guaranteeing agency, or any other interested party,
13 the true terms of a sale of real estate.

14 "(22) Failing to inform the buyer or seller at the
15 time an offer is presented that he or she will be expected to
16 pay certain closing costs and the approximate amount of those
17 costs.

18 "(23)a. Having entered a plea of guilty or nolo
19 contendere to, or having been found guilty of or convicted of
20 a felony or a crime involving moral turpitude.

21 "b. Having a final money judgment rendered against
22 him or her which results from an act or omission occurring in
23 the pursuit of his or her real estate business or involves the
24 goodwill of an existing real estate business.

25 "(24) Offering free lots or conducting lotteries for
26 the purpose of influencing a party to purchase or lease real
27 estate.

1 "(25) Failing to include a fixed date of expiration
2 in a written listing agreement or failing to leave a copy of
3 the agreement with the principal.

4 "(26) Conduct which constitutes or demonstrates
5 dishonest dealings, bad faith, or untrustworthiness.

6 "(27) Acting negligently or incompetently in
7 performing an act for which a person is required to hold a
8 real estate license.

9 "(28) Failing or refusing on demand to produce a
10 document, book, or record in his or her possession concerning
11 a real estate transaction conducted by him or her for
12 inspection by the commission or its authorized personnel or
13 representative.

14 "(29) Failing within a reasonable time to provide
15 information requested by the commission during an
16 investigation or after a formal complaint has been filed.

17 "(30) Failing without cause to surrender to the
18 rightful owner, on demand, a document or instrument coming
19 into his or her possession.

20 "(31) If a qualifying broker or company, failing to
21 keep in their files copies of all contracts, leases, listings,
22 and other records pertinent to real estate transactions for a
23 period of three years.

24 "(b) If it appears that a person, firm, corporation,
25 or any business entity has engaged, or is about to engage, in
26 an act or practice constituting a violation of Article 1 or 2
27 of this chapter or any rule or order of the commission, the

1 commission, through the Attorney General, may institute legal
2 actions to enjoin the act or practice and to enforce
3 compliance with Articles 1 and 2 of this chapter or any rule
4 or order of the commission. To prevail in an action, it shall
5 not be necessary to allege or prove either that an adequate
6 remedy at law does not exist or that substantial or
7 irreparable damage would result from the continued violation.
8 "(c)(1) Notwithstanding any other provisions of law,
9 the commission may issue an order requiring any accused
10 person, firm, corporation, or business entity to cease and
11 desist from engaging in activities requiring a license under
12 this chapter when the accused person, firm, corporation, or
13 business entity is not licensed under this chapter. The order
14 shall be entered by the executive director after a finding of
15 probable cause by the commission staff. The order shall become
16 final 15 days after its service upon the accused, unless the
17 accused requests a hearing before the commission. Upon hearing
18 the case and finding violations, the commission may make the
19 cease and desist order final and the commission may impose a
20 fine for each violation in an amount consistent with the range
21 of fines applicable to licensees, and in addition, may impose
22 a fine in the amount of any gain or economic benefit that was
23 derived from the violation, and in addition, may impose a fine
24 in the amount of the commission's costs incurred. Any fines
25 not paid as ordered shall be enforceable in any court with
26 competent jurisdiction and proper venue.

1 "(2) Notwithstanding any other provisions of law,
2 the commission may decline to issue an order requiring any
3 accused person, firm, corporation, or business entity to cease
4 and desist from engaging in activities requiring a license
5 under this chapter when the accused person, firm, corporation,
6 or business entity is not licensed under this chapter. In this
7 instance, the commission shall proceed to give appropriate
8 notice of the violations and hold a hearing thereon. Upon
9 hearing the case and finding violations, the commission may
10 impose a fine for each violation in an amount consistent with
11 the range of fines applicable to licensees, and in addition,
12 may impose a fine in the amount of any gain or economic
13 benefit that was derived from the violation, and in addition,
14 may impose a fine in the amount of the commission's costs
15 incurred. Any fine or fines not paid as ordered shall be
16 enforceable in any court with competent jurisdiction and
17 proper venue.

18 "(d) The commission shall notify the licensee and
19 qualifying broker in writing regarding the complaint.

20 "(e) The commission shall notify the complainant,
21 licensee, and qualifying broker in writing regarding the
22 disposition of the complaint."

23 Section 2. This act shall become effective on the
24 first day of the third month following its passage and
25 approval by the Governor, or its otherwise becoming law.

Commission Members

COMMISSIONERS

Bill E. Poole, Chair
5th Congressional District

Roy F. Bragg
6th Congressional District

Jewel D. Buford
7th Congressional District

Gordon Henderson
4th Congressional District

Robert S. Hewes
2nd Congressional District

Sheila S. Hodges
1st Congressional District

Chester D. Mallory
Member At Large

Janet R. Morris
3rd Congressional District

Dorothy P. Riggins
Consumer At Large

D. Philip Lasater
Executive Director

Pat Anderson
Assistant Executive Director

OUR MISSION

To protect the public through the licensing and regulating of Real Estate licensees. (Code of AL, Title 34, Chapter 27, Article 1, General Provisions)



1201 Carmichael Way Montgomery, Alabama 36106
Telephone: 334.242.5544 Fax: 334.270.9118
arec.alabama.gov

February 14, 2007

Mr. Calvin Cooper
Examiners of Public Accounts
P.O. Box 3022551
Montgomery, AL 36130-2251

Dear Mr. Cooper,

Below, please find the name, position, mailing address, expiration of term, and date of appointment of each current Commission member and the agency head.

Bill Poole, Commission Chairperson (District 5)
Bill Poole Realty
100 Church Street SW, Suite 525
Huntsville, Alabama 35801
04/20/1995 (Date of Appointment)
10/01/2002 (Reappointment Date)
09/30/2007 (Expiration of Term)

Roy Bragg, Industry Member (District 6)
J.H. Berry & Gilbert, Inc.
3125 Independence Drive
Birmingham, Alabama 35201
10/01/2001 (Date of Appointment)
10/01/2006 (Reappointment Date)
09/30/2011 (Expiration of Term)

Jewel Buford, Industry Member (District 7)
Buford's Real Estate Services
1802 Lurleen Wallace Boulevard
Northport, Alabama 35476
10/01/2004 (Date of Appointment)
09/30/2009 (Expiration of Term)

Gordon Henderson, Industry Member (District 4)
Henderson & Spurlin, Inc.
P.O. Box 268
Albertville, AL 35950
10/01/1998 (Date of Appointment)
10/01/2003 (Reappointment Date)
09/30/2008 (Expiration of Term)

Robert Hewes, Industry Member (District 2)
Coldwell Banker Alfred Saliba Realty
P.O. Drawer 6306
Dothan, Alabama 36302
10/01/2000 (Date of Appointment)
10/01/2005 (Reappointment Date)
09/30/2010 (Expiration of Term)

Sheila Hodges, Commission Vice Chairperson (District 1)
Pleasure Island Corporation d/b/a Meyer Real Estate
P.O. Box 1359
Gulf Shores, Alabama 36547
10/01/2001 (Date of Appointment)
10/01/2006 (Reappointment Date)
09/30/2011 (Expiration of Term)

Chester Mallory, Member At Large
Mallory Realty Company, Inc.
P.O. Box 6056
Montgomery, Alabama 36106
10/01/1998 (Date of Appointment)
10/01/2003 (Reappointment Date)
09/30/2008 (Expiration of Term)

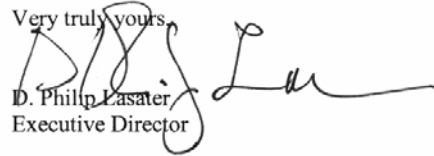
Janet A. Morris (District 3)
Morris VIP Realty, Inc
429 South Decatur Street
Montgomery, Alabama 36104
10/01/2006 (Date of Appointment)
09/30/2011 (Expiration of Term)

Dorothy Riggins (Public Member)
424 Wiltshire Drive
Montgomery, Alabama 36117
10/01/2006 (Date of Appointment)
09/30/2011 (Expiration of Term)

D. Philip Lasater, Executive Director
Alabama Real Estate Commission
1201 Carmichael Way
Montgomery, AL 36106
02/1989

If further information is needed, please let me hear.

Very truly yours,


D. Philip Lasater
Executive Director

DPL/jg